

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 1073.

THE UNITED STATES OF AMERICA, APPELLANT,

vs.

NEW YORK COFFEE AND SUGAR EXCHANGE (INC.).
NEW YORK COFFEE AND SUGAR ASSOCIATION
(INC.). T. S. B. NIELSEN ET AL., ETC.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF NEW YORK.

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Equity subpoena.

The President of the United States of America, to New York Coffee and Sugar Exchange (Inc.), New York Coffee and Sugar Clearing Association (Inc.), T. S. B. Nielsen, Manuel E. Rionda, Frank C. Russell, C. H. Middendorf, J. H. Walter Lenkau, Justus Ruperti, Louis V. Sterling, William S. Scott, C. H. Stoffregen, August Schierenberg, B. B. Peabody, E. L. Lucder, G. H. Finlay, Franklin W. Hopkins, John H. Windels, C. B. Stroud, John A. S. Dunn, Hugh S. Carney, William Dayne, Edward F. Diercks, Leon Israel, Arthur H. Lamborn, Levis W. Minford, in their own right and as representatives of all the members of said New York Coffee and Sugar Exchange (Inc.) and New York Coffee and Sugar Clearing Association (Inc.), greeting:

You are hereby commanded to appear before the judges of the District Court of the United States of America for the Southern District of New York, in the Second Circuit, to answer a bill of complaint exhibited against you in the said court in a suit in equity, by United States of America, and to further do and receive what the said court shall have considered in this behalf. And this you are not to omit under the penalty on you and each of you of two hundred and fifty dollars (\$250).

Witness, honorable Learned Hand, judge of the District Court of the United States for the Southern District of New York, at the city of New York, on the 19th day of April in the year one thousand nine hundred and twenty-three and of the independence of the United States the one hundred and forty-seventh.

[SEAL.]

(Sgd.)

ALEX GILCHRIST, Jr.,
*Clerk.*WILLIAM HAYWARD,
DAVID A. L'ESPERANCE,*Solicitors for the United States.*

The defendants are required to file their answers or other defense in the above cause in the clerk's office on or before the twentieth day after service hereof, excluding the day of said service, otherwise the bill aforesaid may be taken pro confesso.

(Sgd.)

ALEX GILCHRIST, Jr.,
Clerk.

**In the District Court of the United States
for the Southern District of New York.**

UNITED STATES OF AMERICA, PETITIONER,

v.

NEW YORK COFFEE AND SUGAR EXCHANGE

(Inc.), New York Coffee and Sugar
Clearing Association (Inc.), T. S. B.

Nielsen, Manuel E. Rionda, Frank C.

Russell, C. H. Middendorf, J. H. Walter

Lenkau, Justus Ruperti, Louis V. Ster-

ling, William S. Scott, C. H. Stoffregen,

August Schierenberg, B. B. Peabody,

E. L. Lueder, G. H. Finlay, Franklin

W. Hopkins, John H. Windels, C. B.

Stroud, John A. S. Dunn, Hugh S. Car-

ney, William Dayne, Edward F. Diercks,

Leon Israel, Arthur H. Lamborn, Levis

W. Minford, in their own right and as

representatives of all the members of

said New York Coffee and Sugar Ex-

change (Inc.) and New York Coffee

and Sugar Clearing Association (Inc.),

defendants.

In Equity
No. —.

ORIGINAL PETITION.

Now comes the United States of America, by
William Hayward, its attorney for the Southern
District of New York, acting under the direction

of the Attorney General, and brings this petition in equity against the following-named defendants:

I.

DESCRIPTION OF THE PARTIES.

New York Coffee and Sugar Exchange (Inc.), a corporation under the laws of the State of New York, having its principal place of business at 113-117 Pearl Street, New York City, in this district. The objects and purposes of this defendant, as stated in its charter, are—

to provide, regulate, and maintain a suitable building, room or rooms for the purchase and sale of coffees and other similar grocery articles in the City of New York, to adjust controversies between its members, to inculcate and establish just and equitable principles in the trade, to establish and maintain uniformity in its rules, regulations, and usages, to adopt standards of classification, to acquire, preserve, and disseminate useful and valuable business information, and, generally to promote the above-mentioned trade in the City of New York, increase its amount, and augment the facilities with which it may be conducted.

The management of the Exchange is vested in a President, Vice President, Secretary, Treasurer, Superintendent, and a Board of Managers consisting of fifteen members, including all the officers except the superintendent. It has a total authorized membership of three hundred and fifty and an actual membership of three hundred and twenty-three. The mem-

bership consists of persons interested in trade and commerce in coffee, sugar, and other commodities as producers, importers, brokers, etc. They deal on said Exchange as brokers, sometimes representing clients or principals and sometimes in their own right.

New York Coffee and Sugar Clearing Association (Inc.), a corporation under the laws of the State of New York, with its principal place of business at 113-117 Pearl Street, New York City. The purposes of the clearing house as stated in its certificate of incorporation are—

the purchase and sale of coffee and sugar for future delivery and the acquisition by purchase or otherwise of contracts made in accordance with the by-laws, rules and regulations of the New York Coffee and Sugar Exchange (Inc.), for the purchase or sale of coffee and sugar for future delivery, and the assumption of the obligations arising thereunder; the settling, adjusting and clearing for compensation of such contracts; the buying, selling, receiving, carrying, storing and delivering of coffee and sugar, but only in connection with the foregoing purposes; the protection of the corporation against loss in its business by establishing a guaranty fund to be raised by contributions by and assessments upon stockholders, as may be prescribed by its by-laws.

The government of the Clearing Association is vested in a President, Vice President, Secretary,

and Treasurer, and a Board of Directors consisting of seven members. The authorized capital stock of the Association is \$2,000, divided into one hundred shares of \$20 each. Stockholders of the Clearing Association who are also members of the New York Coffee and Sugar Exchange (Inc.), and firms having a member who is a stockholder of this Association and also a member of the New York Coffee and Sugar Exchange (Inc.), may become clearing members of this defendant by advancing to the Association the sum of \$15,000 as a part of a guaranty fund and by agreeing to abide by the by-laws and other regulations.

Thorlief S. B. Nielsen, a resident of the State and district of New Jersey, with his principal place of business at 104 Pearl Street, New York City, and President and a member of the Board of Managers of the New York Coffee and Sugar Exchange (Inc.).

Manuel E. Rionda, a resident of the State of New York, in the southern district thereof, with his principal place of business at 112 Wall Street, and Vice President and a member of the Board of Managers of the New York Coffee and Sugar Exchange (Inc.).

Chas. H. Middendorf, a resident of the State of New York, in the eastern district thereof, with his principal place of business at 66 Beaver Street, New York City, and Treasurer and a member of the Board of Managers of the New York Coffee and Sugar Exchange (Inc.).

J. H. Walter Lenkau, a resident of the State and district of New Jersey, with his principal place of

business at 96 Wall Street, New York City, and a member of the Board of Managers of the New York Coffee and Sugar Exchange (Inc.).

Justus Ruperti, a resident of the State of New York, in the southern district thereof, with his principal place of business at 115 Broad Street, and a member of the Board of Managers of the New York Coffee and Sugar Exchange (Inc.).

Louis V. Sterling, a resident of the State of New York, in the eastern district thereof, with his principal place of business at 42 Broadway, New York City, and a member of the Board of Managers of the New York Coffee and Sugar Exchange (Inc.).

William S. Scott, a resident of the State of New York, in the eastern district thereof, with his principal place of business at 66 Beaver Street, New York City, and a member of the Board of Managers of the New York Coffee and Sugar Exchange (Inc.).

Carl H. Stoffregen, a resident of the State and district of New Jersey, with his principal place of business at 87 Wall Street, New York City, and a member of the Board of Managers of the New York Coffee and Sugar Exchange (Inc.).

August Schierenberg, a resident of the State of New York, in the southern district thereof, with his principal place of business at 15 William Street, Vice President and a member of the Board of Directors of the New York Coffee and Sugar Clearing Association, and a member of the Board of Managers of the New York Coffee and Sugar Exchange (Inc.).

and Treasurer, and a Board of Directors consisting of seven members. The authorized capital stock of the Association is \$2,000, divided into one hundred shares of \$20 each. Stockholders of the Clearing Association who are also members of the New York Coffee and Sugar Exchange (Inc.), and firms having a member who is a stockholder of this Association and also a member of the New York Coffee and Sugar Exchange (Inc.), may become clearing members of this defendant by advancing to the Association the sum of \$15,000 as a part of a guaranty fund and by agreeing to abide by the by-laws and other regulations.

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Chas. H. Middendorf, a resident of the State of New York, in the eastern district thereof, with his principal place of business at 66 Beaver Street, New York City, and Treasurer and a member of the Board of Managers of the New York Coffee and Sugar Exchange (Inc.).

J. H. Walter Lenkau, a resident of the State and district of New Jersey, with his principal place of

business at 96 Wall Street, New York City, and a member of the Board of Managers of the New York Coffee and Sugar Exchange (Inc.).

Justus Ruperti, a resident of the State of New York, in the southern district thereof, with his principal place of business at 115 Broad Street, and a member of the Board of Managers of the New York Coffee and Sugar Exchange (Inc.).

Louis V. Sterling, a resident of the State of New York, in the eastern district thereof, with his principal place of business at 42 Broadway, New York City, and a member of the Board of Managers of the New York Coffee and Sugar Exchange (Inc.).

William S. Scott, a resident of the State of New York, in the eastern district thereof, with his principal place of business at 66 Beaver Street, New York City, and a member of the Board of Managers of the New York Coffee and Sugar Exchange (Inc.).

Carl H. Stoffregen, a resident of the State and district of New Jersey, with his principal place of business at 87 Wall Street, New York City, and a member of the Board of Managers of the New York Coffee and Sugar Exchange (Inc.).

August Schierenberg, a resident of the State of New York, in the southern district thereof, with his principal place of business at 15 William Street, Vice President and a member of the Board of Directors of the New York Coffee and Sugar Clearing Association, and a member of the Board of Managers of the New York Coffee and Sugar Exchange (Inc.).

Benj. B. Peabody, a resident of the State of New York, in the eastern district thereof, with his principal place of business at 87 Front Street, New York City, and a member of the Board of Managers of the New York Coffee and Sugar Exchange (Inc.).

Eberhard L. Lueder, a resident of the State and district of New Jersey, with his principal place of business at 99-101 Wall Street, New York City, and a member of the Board of Managers of the New York Coffee and Sugar Exchange (Inc.).

George H. Finlay, a resident of the State and district of New Jersey, with his principal place of business at 24-26 Old Slip, New York City, and a member of the Board of Managers of the New York Coffee and Sugar Exchange (Inc.).

Franklin W. Hopkins, a resident of the State and district of New Jersey, with his principal place of business at 82 Beaver Street, New York City, President and a member of the Board of Directors of the New York Coffee and Sugar Clearing Association, and a member of the Board of Managers of the New York Coffee and Sugar Exchange (Inc.).

John H. Windels, a resident of the State of New York, in the Eastern district thereof, with his principal place of business at 79 Front Street, New York City, and a member of the Board of Managers of the New York Coffee and Sugar Exchange (Inc.).

Chas. B. Stroud, a resident of the State and district of New Jersey, with his principal place of business at 113-117 Pearl Street, New York City, and

Superintendent of the New York Coffee and Sugar Exchange (Inc.).

John A. S. Dunn, whose residence and principal place of business are to petitioner unknown, Secretary and Treasurer of the New York Coffee and Sugar Clearing Association (Inc.).

Hugh S. Carney, whose residence and principal place of business are to petitioner unknown, Assistant Treasurer of the New York Coffee and Sugar Clearing Association (Inc.).

William Dayne, whose residence and principal place of business are to petitioner unknown, a member of the Board of Directors of the New York Coffee and Sugar Clearing Association (Inc.).

Edward F. Diercks, a resident of the State and district of New Jersey, with his principal place of business at 66 Beaver Street, New York City, and a member of the Board of Directors of the New York Coffee and Sugar Clearing Association (Inc.).

Leon Israel, a resident of the State of New York, in the southern district thereof, with his principal place of business at 99 Wall Street, a member of the Board of Directors of the New York Coffee and Sugar Clearing Association (Inc.).

Arthur H. Lamborn, a resident of the State and district of New Jersey, with his principal place of business at 7 Wall Street, New York City, a member of the Board of Directors of the New York Coffee and Sugar Clearing Association (Inc.).

Levis W. Minford, a resident of the State of New York, in the southern district thereof, with his prin-

cipal place of business at 99-101 Wall Street, and a member of the Board of Directors of the New York Coffee and Sugar Clearing Association (Inc.).

The foregoing defendants are sued in their own right and as representatives of all the members of defendants, New York Coffee and Sugar Exchange (Inc.) and New York Coffee and Sugar Clearing Association (Inc.), they constituting a class so numerous as to make it impracticable to bring them all before the Court.

II.

THE JURISDICTION.

This petition in equity is brought by the United States of America to prevent defendants from further engaging in and carrying out in New York City, in this district, and elsewhere in the United States a combination and conspiracy in restraint of trade and commerce in raw sugar and refined sugar among the several States and with foreign nations, in violation of the Act of Congress of July 2, 1890 (26 Stat. 209), entitled "An Act to Regulate Trade and Commerce against Unlawful Restraints and Monopolies," and in violation of Sec. 73 of the Wilson Tariff Act of August 27, 1894 (28 Stat. 570), as amended by the Act of February 12, 1913 (37 Stat. 567), and against the public policy of the United States and to the detriment and hurt of the people of the United States and in derogation of their common right.

The New York Coffee and Sugar Exchange (Inc.) and the New York Coffee and Sugar Clearing Association (Inc.), parties to and the instrumentalities of the unlawful combination and conspiracy, have their principal places of business in this district, and the individual defendants impleaded by name and those impleaded by representation are, many of them, residents of this district, and all or nearly all have their principal places of business herein.

Petitioner is not now complaining of operations on said Exchange and through said Clearing Association relating to other commodities than raw and refined sugar, said other operations not now being put in issue, and any decree herein should be without prejudice to the right of petitioner in any other proceeding to seek relief against dealings in said other commodities.

III.

THE COMMODITY.

Sugar is a prime article of diet and a necessary of life. The average annual per capita consumption of sugar in the United States is 102.86 pounds. Because sugar enters so largely into the daily life of the people, any artificial increase in the price thereof imposes a severe burden upon each individual citizen. Every advance of one cent per pound in the price of refined sugar costs the consumers in the United States approximately \$2,000,000 a week.

Substantially all the sugar consumed in the United States is refined in the United States and is produced either from sugar cane and sugar beets grown in the United States and its insular possessions, or from raw sugar imported into the United States from foreign countries. Cuba is the natural "sugar bowl" of the world, especially of the United States. Of the 5,092,758 tons of sugar consumed in the United States in 1922, Cuba produced 2,890,571 tons, 56.76 per cent. The present proceeding is concerned mainly with transactions relating to the supply of Cuban raw sugar and the effect of such dealings upon the price and production of raw and refined sugar in this country.

The sources of the sugar consumed in the United States in 1920, 1921, and 1922 are shown in the following table:

	1920		1921		1922	
	Tons.	Per cent.	Tons.	Per cent.	Tons.	Per cent.
Cuba cane.....	2,137,461	52.09	1,986,153	45.44	2,890,571	56.76
Domestic beet.....	454,446	11.12	946,977	23.05	697,626	17.63
Hawaii.....	266,532	6.56	482,322	11.75	461,400	9.06
Porto Rico.....	334,636	8.30	373,789	9.10	311,171	6.11
Philippine Islands.....	114,048	2.79	131,168	3.19	214,449	4.21
Louisiana and Texas.....	81,625	2.00	373,775	6.64	272,971	5.36
Miscellaneous.....	561,004	14.24	34,175	.83	44,477	.87
Total.....	4,084,673		4,167,328		5,092,758	

Sugar, both raw and refined, normally moves in large quantities in both the foreign and interstate commerce of the United States. Supplies of raw sugar for the most part are received from insular

possessions of the United States and Cuba and other foreign countries and are distributed to the several refineries, in many instances in different States, for manufacture into refined sugar. The refined sugar is marketed through wholesale and retail grocers and others to consumers and users throughout the United States. Any artificial manipulation of the price of sugar interferes with, burdens, and restrains the interstate and foreign commerce of the United States.

IV.

OPERATIONS OF NEW YORK COFFEE & SUGAR EXCHANGE (INC.) AND NEW YORK COFFEE & SUGAR CLEARING ASSOCIATION (INC.).

The New York Coffee & Sugar Exchange was chartered by Act of the New York Legislature, dated June 2, 1885. Operations on the Exchange were confined to transactions relating to coffee until December, 1914, when the scope of its operations was enlarged to include transactions relating to sugar. In August, 1917, the Exchange, in response to the request of the United States Food Administrator, suspended operations until February, 1920. Hence, during the entire history of the United States trade and commerce in raw and refined sugar was conducted without the intervention of said Exchange and without the opportunity for speculation and manipulation which the Exchange and the allied Clearing Association afford, except for the three years preceding and the three years following the World War.

Transactions on the Exchange purport to involve bona fide sales and purchases of raw and refined sugar contemplating delivery by the seller to the buyer. In volume the transactions relating to refined sugar are inconsequential as compared to the dealings relating to raw sugar. To the extent that the raw sugar from which deliveries must be made, if at all, exists, the same is stored in bonded warehouses, licensed by said New York Coffee and Sugar Exchange (Inc.), and subject to payment of tariff duties. Such sugar is, therefore, in transit and a subject of the foreign and interstate commerce of the United States. Actually, transactions on the Exchange in an overwhelming majority of cases do not involve and are not intended to involve the delivery of the amount of raw sugar purported to be sold thereby. Such transactions are completed on said Exchange by matching, ring settlements or payments of difference and by clearing through defendant Clearing Association where settlements are reached by matching, payments of difference, etc., without delivery of the amount of sugar stated in the contracts. On an average, about 75 per cent of all transactions are cleared through defendant Clearing Association. Of the total number of contracts cleared through said Association in November, 1922, 0.0018 per cent were consummated by delivery; of the total contracts so cleared in December, 1922, 0.0023 per cent were so consummated; of the contracts in January, 1923, 0.0010 per cent; February, 1923, 0.0002 per cent; and March, 1923, 0.0010 per cent.

By reason of the size of its membership and the large number of firms and corporations with which its members are connected, and which by virtue of such connection transact their business in accordance with the rules thereof, the New York Coffee and Sugar Exchange (Inc.) has become and is the largest commercial center for transactions relating to sugar in the world. While but little sugar is actually delivered in consequence of the numerous transactions on the Exchange, yet the purchases at any particular time are regarded as binding obligations and as establishing the price of sugar for the day for delivery at such time, and the course of the dealings, their fluctuations in prices up and down, are carefully tabulated and immediately transmitted by wire to all the markets of the world and especially to the markets of the United States, and are published in the press of the United States and of many foreign countries; and the prices thus established and published are taken by those who own and sell sugar and those who purchase sugar as the basis for prices in actual transactions, and thus it is brought about that the defendant corporations and individuals by their speculations and gambling in sugar for future delivery control the prices of raw sugar paid by the refiner, who purchases it for preparation for consumption, the prices of the wholesaler or jobber who purchases refined sugar for distribution, the prices of the retailer who purchases it for direct delivery to the consumer, and the prices paid by the millions of consumers throughout the United States.

The maintenance and operations of defendants' New York Coffee and Sugar Exchange (Inc.) and New York Coffee and Sugar Clearing Association (Inc.), inevitably result in the establishment of prices for raw and refined sugar which are wholly speculative and artificial without proper regard for the conditions which but for said unlawful and uneconomic operations would control said prices. Said Exchange and said Clearing Association serve no legitimate or useful purpose in the marketing in interstate and foreign commerce of the United States of raw and refined sugar. They exist only as a means of contracting and speculating with reference to supplies of sugar which in many cases do not exist and for the purpose of manipulating the price of raw and refined sugar without regard to conditions actually obtaining in the industry and regardless of the law of supply and demand and solely for illegitimate gambling or speculative profits to the enrichment of the parties to such operations and frequently to the injury and detriment of those actually engaged in the business of producing and refining sugar and at all times to the serious injury of the consuming public.

V.

THE COMBINATION AND CONSPIRACY IN RESTRAINT OF INTERSTATE AND FOREIGN TRADE AND COMMERCE.

During the period from February 1, 1923, to the date of the filing of this bill, the situation of the United States and of the world in the matter of available stocks of raw sugar was more favorable

than at any time within the last three years. As shown by the following tabulation, production of cane and beet sugar for 1921-1922 was approximately 1,000,000 tons greater than in the preceding year and the estimated production for 1922-1923 is 521,000 tons more than for 1921-1922:

Sugar production of world.

Willott & Gray's estimates for 1922-1923, revised to April 5, 1923. All quantities stated in long tons.]

	1922-23	1921-22	1920-21
United States beet.....	625,000	911,190	999,419
Canada beet.....	15,000	18,951	34,000
Europe beet.....	4,689,290	4,049,821	3,681,461
Total beet.....	5,329,290	4,979,962	4,695,480
Cuba cane.....	4,000,000	3,996,387	3,936,060
Louisiana cane.....	215,000	299,969	150,996
Texas cane.....	2,875	2,920	6,238
Porto Rico cane.....	350,000	362,442	429,494
Hawaii cane.....	476,000	490,000	508,292
West Indies cane.....	6,000	5,000	4,500
Balance of world cane.....	7,933,760	7,860,339	7,087,780
Total cane.....	12,974,635	12,768,787	12,062,440
Total cane and beet.....	18,303,925	17,686,699	16,757,920

The United States Department of Commerce estimates the 1922-23 world production of sugar at 19,511,000 tons, an increase of 1,800,000 over 1921-22.

The situation in Cuba, the principal source of supply, with respect to stocks on hand was but little less favorable than the preceding year:

Situation in Cuba as of April 7, 1923.¹

(All quantities stated in long tons.)

	1922-23	1921-22
Total production.....	2,633,448	2,181,200
Less Cuban consumption.....	22,500	22,500
	2,602,948	2,158,700
Less total exports.....	1,567,501	956,116
	1,035,447	1,192,584
Plus old crop in Cuba.....		134,805
Total sugar in Cuba.....	1,035,447	1,327,389
Stock at ports.....	677,796	851,268
At plantation and in transit.....	357,651	341,316
Old crop.....		134,805
Total sugar in Cuba.....	1,035,447	1,327,389

¹ Figures from Willott & Gray's Weekly Statistical Sugar Trade Journal, April 12, 1923.

At the beginning of 1922 Cuba had 1,200,000 tons of old sugar. This year she had none. Nevertheless the total amount of sugar at all points in Cuba now stands at 1,035,447 tons, against 1,327,389 tons at this time last year. In other words, the deficit of over 1,200,000 tons now amounts to only 291,942 tons.

The estimates of four recognized authorities of the crop for 1922-1923 is as follows:

Estimates of 1922-1923 Cuban crop.

[All quantities stated in long tons.]

Guma Mejer's (Cuba).....	3,800,000
Willet & Gray (U. S.).....	4,000,000
Department of Commerce (U. S.).....	4,000,000
H. A. Himely (Cuba).....	4,102,857

On the 1921-1922 crop, Himely made the highest estimate and the production exceeded his estimate.

The situation in the principal ports of the United States and the United States as a whole, on April 7-11, 1923, was much more favorable than in April, 1922:

Stocks at all United States refining ports.¹

[All quantities stated in long tons.]

	1922	1923
Atlantic ports (New York, Boston, Philadelphia, Baltimore).....	199,546	216,328
New Orleans, April 7.....	38,636	27,569
Savannah and Galveston, April 7.....	17,406	13,742
San Francisco, April 7.....	35,767	18,722
Total in the United States.....	291,464	275,354

¹ Figures taken from Willett & Gray's Weekly Statistical Sugar Trade Journal as April 12, 1923.

There existed during this period no economic justification for a sudden or appreciable increase in the price of raw or refined sugar, or for any increase. Notwithstanding these favorable conditions, the price of raw sugar at New York, May delivery, increased between February 1, 1923, and February 8, 1923, from \$3.65 to \$4.07 per cwt. Thereafter prices gradually increased from day to day until April 16, 1923, when the peak of \$5.97 was reached. Closing

prices for all trading days during this period are as follows:

Closing prices on New York Coffee and Sugar Exchange for each trading day from February 1, 1923, to April 16, 1923.

	March de- livery.	May de- livery.	July de- livery.	Septem- ber de- livery.		March de- livery.	May de- livery.	July de- livery.	Septem- ber de- livery.
Feb. 1	\$3.56	\$3.65	\$3.76	\$3.84	Mar. 10	.....	\$5.09	\$5.80	\$5.00
2	3.60	3.77	3.86	3.90	12	.....	5.06	5.90	5.09
3	3.67	3.78	3.86	3.93	13	.....	5.76	5.80	5.00
5	3.62	3.71	3.82	3.89	14	.....	5.78	5.92	5.03
6	3.66	3.87	3.90	4.07	15	.....	5.79	5.91	5.04
7	3.96	3.95	4.05	4.11	16	.....	5.74	5.87	5.00
8	4.07	4.07	4.17	4.23	17	.....	5.76	5.92	5.05
9	4.28	4.32	4.43	4.46	19	.....	5.73	5.90	5.04
10	4.43	4.61	4.62	4.91	20	.....	5.69	5.77	5.92
13	5.43	5.61	5.82	5.91	21	.....	5.50	5.69	5.94
14	5.25	5.40	5.40	5.50	22	.....	5.68	5.88	5.04
15	4.90	5.09	5.13	5.28	23	.....	5.55	5.75	5.90
16	5.07	5.22	5.35	5.49	24	.....	5.44	5.66	5.80
17	5.38	5.48	5.56	5.73	26	.....	5.62	5.73	5.87
19	5.13	5.31	5.44	5.57	27	.....	5.66	5.88	5.05
20	5.30	5.37	5.50	5.64	28	.....	5.63	5.83	5.99
21	5.46	5.65	5.77	5.87	29	.....	5.62	5.82	5.97
22	5.54	5.73	5.83	5.94	Apr. 2	.....	5.57	5.77	5.92
24	5.32	5.51	5.59	5.70	3	.....	5.58	5.78	5.93
26	5.10	5.23	5.32	5.41	4	.....	5.62	5.83	5.97
27	5.06	5.19	5.25	5.34	5	.....	5.75	5.96	5.11
28	5.48	5.53	5.62	5.71	6	.....	5.76	5.97	5.13
Mar. 1	.....	5.65	5.74	5.82	7	.....	5.76	5.97	5.11
2	.....	5.58	5.65	5.74	9	.....	5.86	5.11	5.28
3	.....	5.41	5.48	5.57	10	.....	5.91	5.14	5.29
5	.....	5.67	5.55	5.63	11	.....	5.92	5.15	5.30
6	.....	5.67	5.66	5.76	12	.....	5.96	5.08	5.30
7	.....	5.56	5.64	5.73	13	.....	5.96	5.06	5.31
8	.....	5.75	5.84	5.95	14	.....	5.97	5.06	5.31
9	.....	5.66	5.76	5.87	16	.....	5.97	5.17	5.31

The price movements for raw sugar were immediately reflected in the price of refined sugar, as shown by the following statement of the prices charged by the principal refiners in the United States:

Refined sugar quotations, barrels or 100-pound bags, f. o. b. New York.

	2/7	2/8	2/13	3/15	3/23	3/29	4/5	4/13
	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>	<i>Cents.</i>
American.....	6.70	7.00	8.25	9.30	9.00	9.00	9.00	9.40
National.....	6.70	7.00	8.25	9.30	9.00	9.00	9.00	9.40
Arbuckle.....	6.60	6.90	.....	9.00	8.75	8.75	8.75	9.30
Federal.....	6.50	7.00	8.00	8.90	8.90	8.90	8.90	9.30
Warrick.....	6.70	7.00	8.30	9.30	9.00	9.00	9.00	9.40

The extent of the rise in the price of refined sugar f. o. b. New York appears from a comparison of the quotation of \$9.40 per cwt. on April 12, 1923, with the quotation of \$5.25 per cwt. which obtained on April 8, 1922.

This rapid increase in the price of raw and refined sugar beginning on February 7, 1923, and in effect on the date of the filing of this bill, was and is the direct result of a combination and conspiracy between the New York Coffee and Sugar Exchange (Inc.), the New York Coffee and Sugar Clearing Association (Inc.), and the officers and members of those corporations and their clients or principals, who, by means of purported purchases and sales of sugar, have sought to establish and have established artificial and unwarranted prices, not governed by the law of supply and demand, but based wholly on speculative dealings not involving the delivery of the quantities of sugar represented thereby, but altogether carried on for the purpose and with the effect of unduly enhancing the price of sugar to the enrichment of said defendants and their principals and to the detriment of the public.

Since February 7, 1923, an orgy of speculation in raw sugar has been indulged in through the instrumentality of the Exchange and Clearing Association. Enormous quantities of raw sugar, greatly in excess of the quantities customarily dealt in and more than the total stocks of raw sugar then in existence, have been the subject of fictitious or "paper" sales. The transactions on the Exchange during February, 1923 (a short month with two holidays), aggregated 1,515,050 tons as compared with 362,850 tons in January. During that month only 300 tons were actually delivered as a result of transactions on the Exchange. During March, 1923, transactions purporting to involve the purchase and sale of raw sugar were had on the Exchange to the extent of 937,900 tons, and deliveries amounted to only 1,250 tons.

The commission charges upon each lot (50 tons) dealt in upon the exchange are \$15 for members and \$25 for non-members. The commission charges on transactions on the Exchange in February amounted to approximately \$900,000, an average of more than \$40,000 each trading day. The stamp taxes paid the United States Government on those transactions amounted to \$35,711.

The feverish speculation giving rise to the abnormal and unwarranted increases in the prices of raw and refined sugar is shown by the following statement contrasting operations on the Exchange and Clearing Association during February and March, 1923, with the preceding three months:

A Contracts bought and sold (number)	B Open contracts from previous month (number)	C Total (number)	D Contracts cleared through clearing house.		E Notices issued and stopped (deliveries).		F Contracts matched.		G Total.		H Contracts open.		
			Number.	Per cent.	Number.	Per cent.	Number.	Per cent.	Number.	Per cent.			
November, 1922.....	9,102	4,011	13,173	9,865	0.7565	24	0.0018	172	0.0131	10,161	0.7714	3,012	0.2296
December, 1922.....	6,229	3,012	9,241	5,403	.5847	21	.0023	174	.0138	8,596	.9209	3,643	.3942
January, 1923.....	7,487	3,643	11,130	6,133	.5508	11	.0010	214	.0192	6,378	.5790	4,793	.4370
February, 1923.....	32,083	4,752	36,790	30,576	.8311	6	.0002	1,397	.0494	32,178	.8757	4,612	.1283
March, 1923.....	19,412	4,612	24,024	18,632	.7756	25	.0010	684	.0273	19,311	.8053	4,713	.1902

Legend: A+B=C; D+E+F=G; C-G=H.

As a result of these fictitious or paper transactions, carried out as aforesaid, the price of raw sugar in this country, and consequently the price of refined sugar to the consumers, has been increased on an average of considerably more than \$2 per cwt. These speculative operations, carried on for the purpose and with the intent of unduly enhancing the price of both raw and refined sugar, and which have accomplished that object, constitute and are an unlawful combination and conspiracy in restraint of interstate and foreign trade and commerce in said raw sugar and refined sugar, both of which are normally articles of interstate and foreign trade and commerce, and have resulted, and unless restrained by this Honorable Court will continue to result, not only in the continued enhancement of the price of raw and refined sugar but also in a diminished demand for raw and refined sugar, thereby lessening the traffic in those commodities in interstate and foreign commerce. Said combination and conspiracy, and all acts in pursuance thereof, are in violation of the aforesaid acts of July 2, 1890, and August 27, 1894 (as amended), and contrary to the public policy of the United States of America and in derogation of the common right of the people of the United States.

VI.

THE IMMEDIATE MENACE OF CONTINUING THE COMBINATION AND CONSPIRACY.

The defendants, by the methods and means hereinbefore described, are still engaged in carrying out

their unlawful combination and conspiracy unlawfully and unreasonably to enhance the prices and to prevent the lowering of prices of raw and refined sugar, and are pursuing their operations with unabated zeal. Unless this court shall promptly issue its injunction restraining the defendants from carrying out, by the means described or otherwise, their said unlawful combination and conspiracy, the further unlawful maintenance and enhancement of the present abnormally high prices of raw and refined sugar will constitute an irreparable public injury in that such exorbitant prices will be extorted from your petitioner and from the public without possibility of restitution, and especially in that numerous essential industries having to do with the canning and preservation of fruits and the manufacture of confections and other foodstuffs in which sugar is an essential ingredient will be compelled by such abnormally high prices to largely restrict their purchases of sugar in interstate and foreign commerce and thus largely curtail production of such commodities and foodstuffs entering into interstate and foreign trade and commerce to the irreparable injury of all such industries and of all the people of the United States.

VII.

PRAYER.

Wherefore petitioner prays:

1. That writs of subpcena be issued directed to each and every of the defendants impleaded by name, commanding them, and each of them, to

appear herein and answer for themselves and for those whom they represent, but not under oath (answer under oath being hereby expressly waived), the allegations contained in this petition, and to abide by and perform such orders and decrees as the Court may make in the premises.

2. That the Court order this cause to be heard on application for a preliminary injunction (hereby made) within ten days after the service of notice hereof on said defendants, and that the Court upon such application and hearing issue its preliminary injunction against the defendants (including those impleaded by representation as well as those impleaded by name) enjoining them, and all of them, from further engaging in the unlawful combination and conspiracy above described, and from further operating said New York Coffee and Sugar Exchange (Inc.), and said New York Coffee and Sugar Clearing Association (Inc.), in so far as they relate to sugar.

3. That upon final hearing it be adjudged and decreed that by-laws, rules, and regulations of said defendant corporations, in so far as they relate to sugar, their adoption by said corporations and said individual defendants, and the concerted action of said defendants in carrying out said rules and regulations as hereinbefore described constitute a combination and conspiracy in restraint of interstate and foreign trade and commerce in raw and refined sugar in violation of the Act of July 2, 1890, known

as the Sherman Anti-Trust Act, and are also in violation of Section 73 of the Act of August 27, 1894, as amended by the Act of February 12, 1913, known as the Wilson Tariff Act, and are contrary to public policy and detrimental to the people of the United States and in derogation of their common right.

4. That defendants and each of them be perpetually enjoined from maintaining and operating and from engaging in the operation of said Exchange and Clearing House in so far as they deal in or purport to deal in sugar and from establishing, maintaining, operating, or engaging in the operation of any plan or scheme of like character or designed or intended to establish artificial prices of sugar or to substantially affect prices of sugar by artificial means, or the necessary result of which would be to so establish and affect the prices of sugar.

5. That said defendants and each of them be perpetually enjoined from in any manner publishing or making public any price or prices of raw or refined sugar as being or purporting to be the market price of such sugar as established by or observed in transactions on said Exchange, and from attempting to establish the prices named in transactions on said Exchange as the market price of sugar to be observed in bona fide transactions actually involving the purchase, sale, and delivery of sugar.

6. That the defendants and each of them be perpetually enjoined from entering into or permitting to be entered into any transactions on said Exchange

or elsewhere involving or purporting to involve the purchase, sale, and delivery of sugar, unless the person purporting to make such sale has in his possession or under his control a supply of sugar adequate to meet the requirements of such transaction, and the person purchasing or purporting to purchase shall in good faith intend to buy and pay for such sugar and accept delivery as soon as same can be made.

7. That petitioner have such other, further, and general relief as the nature of the case may require and the Court deem proper.

8. That petitioner have its costs.

UNITED STATES OF AMERICA,
By WILLIAM HAYWARD,
*United States Attorney for the
Southern District of New York.*

H. M. DAUGHERTY,
Attorney General.

JAMES M. BECK,
Solicitor General.

A. T. SEYMOUR,
Assistant to the Attorney General.

J. A. FOWLER,
ROGER SHALE,

A. F. MYERS,

DAVID A. L'ESPERANCE,
Special Assistants to the Attorney General.

STATE OF NEW YORK,

County of New York, ss:

David A. L'Esperance, being duly sworn, deposes and says that he is a Special Assistant to the Attorney General, with an office in the Old Post Office Building, New York, N. Y.; that he has read the foregoing petition and knows the contents thereof; and that the allegations made therein are true to the best of his knowledge, information, and belief.

DAVID A. L'ESPERANCE.

Subscribed and sworn to before me this 19th day of April, 1923.

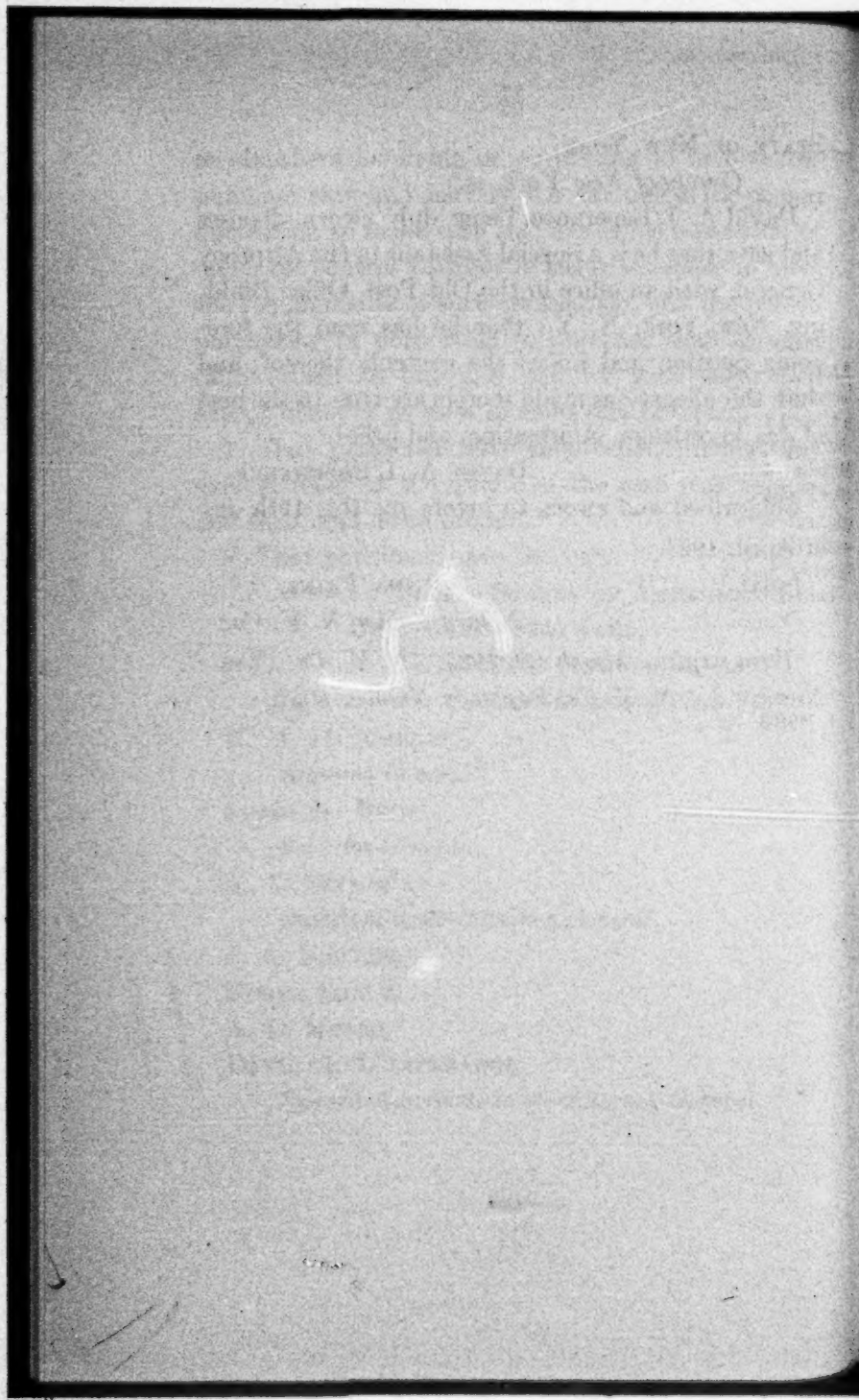
[SEAL.]

ANNA FAINS,

Notary Public N. Y. Co.

Term expires March 30, 1925. N. Y. Co. Clerk's Number 3. N. Y. Co. Register's Number 5051.

○



28 Notice of motion for temporary injunction served April 19th, 1923, together with subpoena and copy of original petition.

United States District Court, Southern District of New York.

[Title omitted.]

Notice of motion for injunction.

Please take notice that upon the petition of the United States of America, verified the 19th day of April, 1923, a copy of which is herewith served upon you, the undersigned will make a motion at a stated term of this honorable court, to be held in the court rooms thereof in the Federal and Old Post Office Building, Borough of Manhattan, city of New York, on the 30th day of April, 1923, at 10.30 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for a preliminary injunction in accordance with the prayer of the aforesaid petition, and for such other and further relief as to the court may seem proper in the premises.

Dated New York City, N. Y., April 19th, 1923.

Yours, etc.,

WILLIAM HAYWARD,
United States Attorney
for the Southern District of New York.

In Equity No. 26-255.

IN THE

District Court of the United States,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

UNITED STATES OF AMERICA,
Petitioner,

against

NEW YORK COFFEE AND SUGAR EX-
CHANGE, (INC.), NEW YORK
COFFEE AND SUGAR CLEARING
ASSOCIATION, (INC.), *et al.*,
Defendants.

2

The Joint and Several Answer of NEW YORK COFFEE AND SUGAR EXCHANGE, INC., hereinafter called the "Exchange", and NEW YORK COFFEE AND SUGAR CLEARING ASSOCIATION, INC., hereinafter called the "Clearing Association", defendants, to the Bill of Complaint.

These defendants, reserving all manner of exception that may be had to the uncertainties and imperfections of the Bill, come and answer thereto, or to so much thereof as they are advised is material to be answered, and say:

3

I.

These defendants admit the allegations of

- 4 Paragraph I of Complainant's Bill, with these exceptions:

A. These defendants deny that the defendant, Thorlief S. B. Nielsen is the president or a member of the Board of Managers of the New York Coffee and Sugar Exchange, Inc., or has been such president or member of the said Board of Managers since the 24th day of January, 1923.

- 5 B. These defendants deny that the defendant, MANUEL E. RIONDA, is a resident of the State of New York, or is the vice-president of the New York Coffee and Sugar Exchange, Inc., or has been such vice-president since the 24th day of January, 1923; but they admit that he is and has been a member of the Board of Managers thereof.

C. These defendants deny that the defendant, CHARLES H. MIDDENDORF, is the treasurer of the New York Coffee and Sugar Exchange, Inc., or has been such treasurer since the 24th day of January, 1923; but they admit that he is and has been a member of the Board of Managers thereof.

- 6 D. These defendants deny that the defendant, AUGUST SCHIERENBERG, is a resident of the State of New York, or is a member of the Board of Managers of the New York Coffee and Sugar Exchange, Inc., or has been a member of said Board of Managers since the 24th day of January, 1923, or that he was prior to April 2nd, 1923, Vice-President of the Clearing Association.

E. These defendants deny that the defendant, GEORGE H. FINLAY, is a member of the Board of Managers of the New York Coffee and Sugar Exchange, Inc., or has been a member of said

Board of Managers since the 24th day of January, 1923. 7

F. These defendants deny that the defendant, FRANKLIN W. HOPKINS, is a member of the Board of Managers of the New York Coffee and Sugar Exchange, Inc., and allege that he has not been a member of said Board since the 24th day of January, 1923, and deny that he was prior to April 2nd, 1923, President of the Clearing Association.

G. These defendants deny that the defendant, JOHN H. WINDELS, is a member of the Board of Managers of the New York Coffee and Sugar Exchange, Inc., and allege that the said John H. Windels died prior to the filing of said Bill. 8

H. These defendants deny that the defendant, LEVIS W. MINFORD, is a resident of the State of New York or of the Southern District, and allege that he is a resident of the State of New Jersey.

Further answering paragraph I of complainant's bill, these defendants allege that in accordance with the powers conferred upon the Exchange by its Charter, the Exchange maintains and has maintained since its incorporation in 1885, a daily market where coffee for future delivery can be bought and sold and records all sales there made, and since on or about December, 1914, has similarly maintained a daily market where sugar for future delivery can be bought and sold and records all such sales and the prices at which they are made, with the exception of certain periods during the late war, when trading in coffee and sugar on the Exchange was suspended, at the request of the United States Food Administrator; that the Exchange has adopted 9

- 10 and maintains By-laws, rules and regulations for the management of the business of its members and the method under which such business shall be transacted, and, pursuant to said By-laws and rules maintains committees of arbitration for the settlement of matters of dispute arising from transactions in said commodities, and regulations governing the inspection and sampling of coffee and sugar.

- That the said By-laws and rules provide for the admission, discipline and expulsion of members and govern the relations of business of said members to said Exchange and to each other;
- 11 that the said rules regulate the making by its members of contracts for future delivery of coffee and sugar, one of which rules requires that such contracts must be made in the open market on the exchange floor, during certain hours for trading, and others fix the grades of the commodity which shall be deliverable upon said future contracts, and provide for the several different grades which shall be deliverable upon said contracts at a fixed premium or discount price. Another of said rules provides that in case there is an unintentional or unpremeditated default at the maturity of the contract, settlements for such default shall be made at the then spot or market
- 12 value for the said commodity, determined as nearly as can be by a committee of the Exchange, which rule makes it the duty of such committee daily to determine the true commercial value of said commodities. And said rule further provides for certain penalties by reason of any such default; and said rules further provide that when any member shall otherwise default on a contract or in the payment of any award made in any arbitration or be guilty of any other mis-

conduct, he shall be suspended by the Board of Directors from all the privileges of membership and that in case any member shall be guilty of certain other offenses, such as bad faith, or other such conduct, he shall be expelled from the exchange, after charges filed with the board and a hearing thereon. 13

And these defendants further allege that the Exchange does not enter into and never has entered into any commercial transactions whatever for profit, nor does it pay or seek to pay any dividends to its members; that its chief purpose and function is to provide an exchange room where its members may meet daily, between certain market hours, and make with each other contracts for the purchase and sale of coffee and sugar for future delivery and also to prescribe and enforce rules respecting the terms of such contracts and to enforce by disciplinary proceedings, when necessary, compliance by its members with their said contracts and for the settlement of disputes arising between its members out of their tradings, and to preserve a record of all sales made on the floor of the Exchange, and further to collect and disseminate useful business information and to determine who are fit persons, as respects character and financial responsibility to be and remain its members. That it causes to be recorded each business day the first price and each change in price made in the contracts for present and future delivery which are entered into by its members in its exchange hall during its market hours, and permits said quotations to be obtained in the City of New York by a telegraph company, which transmits such quotations through its telegraph service and so-called "tickers" to the members of the Exchange and others, and such prices and quotations truthfully 14 15

16 and accurately represent the course of such prices.

That the members of said Exchange engage only in the following different kinds of trading in coffee and sugar:

17 (1) Many of them, including some of the individual defendants in this action, act as commission merchants and receive from producers and others shipments of coffee or sugar, consigned to them, which, as agents, they sell and they account to their principals for the proceeds of such sales, less their commissions and other expenses; and many of said members, acting
either as agents or principals, purchase and sell coffee and sugar in New York City, which is in storage in said City, for immediate delivery, all of such transactions being popularly known as cash trades or "spot" trades and none of which take place on the floor of the Exchange or are recorded by the Exchange.

18 (2) Many members of said Exchange, including some of the individual defendants, send out in the afternoon whenever market conditions are favorable, telegrams and letters to dealers and others, offering to buy coffee or sugar at a certain named price, to be shipped within a certain named time, if the offer shall be accepted by telegram received by the offering member before the said market hours next morning. Many members also send out, when market conditions are favorable, telegrams and letters to refineries and other consumers offering to sell sugar at a named price, subject to shipment within a named time, if such offers are accepted within a certain time.

(3) Many of said members, including some of the individual defendants, daily engage, either as principals or as brokers or as agents, in the mak-

ing in said exchange room of contracts with 19
 other members of the Exchange for the purchase
 and sale of coffee and sugar for future delivery,
 said contracts providing that the seller therein
 shall deliver in New York the coffee or sugar
 covered by the contract upon any date of the
 named month that he shall select; that the en-
 tire trading in said exchange room consists of
 making or transferring contracts for future de-
 livery, and respecting such trading the rules of
 said Exchange have for many years required, and
 now require, that all orders received by mem-
 bers to buy or sell for future delivery must be
 executed in the open market, under its exchange
 rules and only during the hours for regular trad- 20
 ing, and by reason thereof, all such trading in
 coffee and sugar for future delivery by members
 of the said Exchange is in the aforesaid exchange
 room, in said market hours, and both the buyers
 and sellers parties to such contracts are person-
 ally present in the City of New York, when the
 contracts are made. And said rules further re-
 quire that any offer to buy or sell for future de-
 livery shall be made on the exchange floor, dur-
 ing the hours for regular trading, and may be
 accepted by any other member of the said Ex-
 change and the contract shall be made with the
 member first accepting said offer. 21

That many of the members of said Exchange
 are bankers, refiners, producers, users and manu-
 facturers of sugar, etc., who find it to their busi-
 ness advantage to be members of said Exchange,
 but who are not active on the floor thereof, and
 many more of said members act only as agents
 and receive from others on consignment ship-
 ments of coffee and sugar to be sold by them as
 agents which they protect by future contracts on
 the Exchange, and others of said members act

- 22 only as agents or brokers in the making of future contracts with other members of said Exchange.

That all such contracts for future delivery provide for the delivery of negotiable warehouse receipts, which represent the actual commodity, and receipts of only such warehouses as are approved and licensed by the Exchange.

- 23 That in this trading for future delivery in the exchange room of said Exchange, during every year many millions of tons of sugar are bought and sold for future delivery, and as respects upwards of three-quarters of the sugar covered thereby, said contracts are fulfilled and settled without any delivery of any warehouse receipts, but are settled by offsets or clearances through the Clearing Association, and the payment of differences in market price, or they may be settled by so-called "ring" settlements, which are provided for by the rules of said Exchange and that practically said remaining future contracts are performed or completed during the months specified for delivery, by delivery by sellers to buyers of said warehouse receipts.

- 24 That a large part of the total volume of trading in sugar for future delivery in the exchange room of said Exchange, as above described, consists of contracts made by producers of sugar, refiners, merchants and other consumers, who make such contracts entirely for the purpose of insuring themselves against price fluctuations, respecting sugar either owned, sold, or purchased by them, for the purpose of merchandising or shipping to consuming markets or refining, or using in manufactured products in which sugar is used, and that in most cases such contracts for future delivery are fulfilled by the making of counter contracts to offset the ones originally made; the actual sugar which such future con-

tracts were based upon being sold or disposed of 25
to refiners or others. That another large part
of said future trading in said exchange room
consists of contracts made by or for so-called
speculators, persons who have capital and make a
study of trade conditions affecting prices, and
endeavor to forecast the future prices of sugar
and profit thereby, through the making of such
contracts for future delivery

That in order to enable its members and
their customers to have all available knowledge
when making said contracts, said Exchange gath-
ers from many parts of the world such data and
other information respecting conditions of grow- 26
ing crops and visible supply of sugar in different
countries, the current prices of different grades
of sugar prevailing in the different sugar mar-
kets of the world, etc., as it can obtain, and it
makes such information available to all its mem-
bers and through them to their customers.

That a very large proportion of all of the
world's trading in sugar for future delivery takes
place in the exchange room of the Exchange, but
that a similar exchange is maintained in the City
of New Orleans, which affords its members and
their customers like facilities for making con-
tracts for future delivery, and prior to the Great
War, similar exchanges were for many years 27
maintained in London, Paris and Hamburg, and
that one of the reasons for the establishment of
trading in sugar on the floor of this Exchange
was the closing of the European exchanges on or
about August 1st, 1914, and the consequent im-
possibility of trading thereon.

That the prices prevailing in said future trad-
ing at any time are the expression of the pre-
ponderance of opinion amongst interested trad-

28 ers as to the future course of the prices of sugar and the prices in said future trading ordinarily express the normal operation of the natural law of supply and demand.

That the rules of the Exchange are designed to prevent abnormal fluctuations of prices and injurious speculation and such abnormal fluctuations of prices of sugar do not frequently occur except as a result of economic commercial conditions.

29 That the rules and practice of the Exchange forbid fictitious or paper transactions and prevent the making of any contracts that do not legally involve the obligation to deliver the subject of said contract and are intended to and do prevent the operation of any corner or manipulation of prices. And the said rules limit the variation on any day of the price of sugar futures for any month to one cent per pound in the price, and the Board of Managers of said Exchange are given the power to suspend trading whenever such conditions arise that in their judgment the best interests of the Exchange will be thereby promoted.

30 That the purchase and sale of sugar for future delivery upon said Exchange is a distinct benefit to all producers and consumers and to persons engaged in commerce in sugar and to the public in general, in that it enables carriers of sugar to protect themselves against price fluctuations, by the making of "hedging" contracts upon such Exchange.

That the trading in futures in the room of the Exchange and the operations of said Exchange are substantially similar to those of Exchanges dealing in other commodities, such as the Board of Trade of the City of Chicago, dealing in grain; the New York Cotton Exchange, dealing in cot-

ton; the New York Produce Exchange, dealing 31
 in grain and other produce, and that all of said
 exchanges, as well as this defendant, perform
 a great and important economic function in con-
 nection with the distribution of the products in
 which they deal. That all of the acts performed
 by the defendant Exchange, and its members, in
 accordance with its rules and practice, have been
 specifically and definitely approved by the Su-
 preme Court of the United States, and by the
 Court of Appeals of the State of New York,
 and by the Congress of the United States in
 its enactments known as the "Grain Futures
 Act", the "Cotton Futures Act", and other acts 32
 regulating the operations of grain and cotton ex-
 changes, and thereby recognizing the valuable
 economic function of such exchanges.

And these defendants further allege that the
 prices of sugar bought and sold on the floor of
 this Exchange are dominated by the operation of
 the natural law of supply and demand and are
 based upon free and open competition in trad-
 ing; that any attempt at deliberate manipulation
 of prices on such Exchange is contrary to the
 By-Laws of said Exchange and would be sup-
 pressed by the Board of Managers; that, as de-
 fendants verily believe, no effort at the deliber-
 ate manipulation of such prices has ever been 33
 made during the lifetime of such Exchange, and
 if attempted it would become the duty of the
 Board of Managers to exert the powers vested
 in them to its immediate suppression.

And these defendants further allege that the
 Clearing Association does not make any pur-
 chases or sales of coffee or sugar, and that it
 does not deal in coffee or sugar except as an
 agency in clearing contracts of members of the
 said Exchange and of the said Clearing Associa-

- 34 tion, and that its clearance of said contracts is simply an offsetting of contracts of certain members against the contracts of certain other members, and guarantees of performance, and that in such respect it constitutes a mere convenience, avoiding undue waste of time and effort, and affords a protection by its requirements of suitable margin to protect contracts. That the only exception to the foregoing is that the said Clearing Association has the power, under its Charter, and may, for the purpose of protecting itself against a default by any member, of buying or selling coffee or sugar in the market for the purpose of protection against such default, but that
- 35 in the entire existence of the Clearing Association, very few such purchases or sales have ever been made. And these defendants allege that the function and powers of the Clearing Association are similar to those of other clearing associations, the validity, legality and propriety of which have been approved by the Supreme Court of the United States, by Congress, and by the Court of Appeals of the State of New York, as hereinbefore stated with respect to exchanges.

36

II.

These defendants admit the allegations of Paragraph II of Complainant's Bill, with the exception that they deny that they are or ever have or either of them ever has been engaging in or carrying out in New York City, or in this district, or elsewhere in the United States, or anywhere, a combination or conspiracy in restraint of trade and commerce in raw sugar or in refined

sugar among the several states or with foreign nations, in violation of any Act of Congress or against the public policy of the United States, or to the detriment and hurt of the people of the United States or in derogation of their common right, or that they are parties to or the instrumentalities of any unlawful combination or conspiracy. 37

III.

These defendants admit the allegations of Paragraph III of Complainant's Bill, except that these defendants deny that the present proceeding is concerned mainly with transactions relating to the supply of Cuban raw sugar and the effect of such dealings upon the price and production of raw and refined sugar in this country, and except that these defendants are without knowledge as to whether the average annual per capita consumption of sugar in the United States is 102 86/100 pounds, or as to whether any artificial increase in the price of sugar imposes a severe burden upon each individual citizen, or as to whether every advance of one cent per pound in the price of refined sugar costs the consumers in the United States approximately \$2,000,000 a week, or as to whether any artificial manipulation in the price of sugar burdens and restrains interstate and foreign commerce in the United States, and they allege that the average annual per capita consumption of sugar varies in different years, and prior to 1922 has always been materially less than 102 86/100 pounds. 38 39

And further answering said Paragraph III of

- 40 Complainant's Bill, these defendants deny that they, or either of them, have caused any artificial increase, or any increase, in the price of sugar, or have caused any artificial manipulation, or any manipulation, of the price of sugar.

IV.

- These defendants admit that the defendant, the Exchange, was chartered by Act of the New York Legislature, dated June 2, 1885, and they admit
- 41 that operations on the Exchange were confined to transactions relating to coffee until December, 1914, when the scope of its operations was enlarged to include transactions relating to sugar. They admit that in August, 1917, the Exchange, in response to a request of The United States Food Administrator, suspended operations until February, 1920, and they allege that at the same time the Grain Exchanges in Chicago, Minneapolis and Kansas City likewise ceased trading in wheat at the request of the said The United States Food Administrator, for the reason that the Government undertook to control and did control the
- 42 price of said food commodities during the continuance of hostilities. They admit that during the entire history of the United States trade and commerce in raw and refined sugar was conducted without the intervention of said Exchange, except for approximately the three years preceding the entry of the United States into the World War, and approximately two years after the World War; but they deny that such trade and commerce was conducted without the opportunity of speculation and manipulation which the Bill al-

leges that these defendants afford, and they allege 43
 that prior to the time that sugar transactions
 occurred on this defendant Exchange, the same
 alleged opportunity for speculation and manipu-
 lation, if any, existed on the London, Hamburg
 and Paris Sugar Exchanges, and now exists on
 the London, Paris and New Orleans Sugar Ex-
 changes, and that it was in large part, if not en-
 tirely, due to the closing of the London and other
 European Sugar Exchanges on or about August
 1st, 1914, that in December, 1914, trading in sugar
 on the New York Coffee and Sugar Exchange
 was commenced, to facilitate commercial trans-
 actions in sugar; and these defendants further 44
 allege that these defendants fulfill a useful and
 beneficial economic function and that if these de-
 fendants are compelled to cease operations, by
 reason of this Bill or otherwise, similar trans-
 actions no doubt will be carried on at some other
 like Exchange that is or will be established in
 London, or in Havana, or in Montreal, or in some
 other commercial centre without the jurisdiction
 of the United States, which will result in destroy-
 ing the supremacy of the United States in the
 sugar market and will drive United States capital
 to foreign countries, as was the condition prior
 to the World War.

Further answering said Paragraph IV of com- 45
 plainant's Bill, these defendants admit that trans-
 actions on the Exchange purport to involve, and
 they allege that they do involve, bona fide sales
 and purchases of raw and refined sugar, con-
 templating delivery by the seller to the buyer;
 they further admit that in volume the transac-
 tions relating to refined sugar are relatively in-
 consequential as compared with the dealings in
 raw sugar. They admit that to the extent that
 the raw sugar from which deliveries must be made,

- 46 exists, the same is stored in bonded warehouses licensed by said New York Coffee and Sugar Exchange, Inc., and subject to the payment of tariff duties. They deny that such sugar is, therefore, in transit or is subject to interstate commerce of the United States. They admit that transactions on the Exchange in a great majority of cases do not involve the delivery of the amount of raw sugar sold thereby; but they deny that such transactions are not intended to involve the delivery of such sugar, or that such sugar is not actually sold thereby, and they allege that all transactions on the Exchange contemplate the actual delivery of sugar in accordance with such
- 47 transactions, and that any buyer of any such contract can compel the delivery of sugar thereunder. These defendants admit that such transactions are frequently completed on said Exchange by off-sets, sometimes called matching, ring settlements, and payment of differences and by clearing through defendant, Clearing Association, where settlements are reached by offsets, sometimes called matching, payments of differences, etc., without delivery of the amount of sugar stated in the contracts, and they allege that all such settlements constitute off-sets, and their validity and rectitude
- 48 is established beyond question by the decisions of the Supreme Court of the United States, and by decisions of the Court of Appeals of the State of New York.

Further answering said paragraph, they admit that on an average upwards of 75 per cent. of all transactions are cleared through defendant, Clearing Association, and that the percentages of the total number of contracts cleared through said Association for the months therein referred to are correctly stated in said paragraph IV of

Complainant's Bill, except that the decimal point 49
 is incorrectly placed two places to the left in each
 of such cases. They admit that the Exchange has
 become and is the largest commercial centre for
 transactions relating to sugar, in the world. They
 admit that while but little sugar is actually deliv-
 ered in consequence of the numerous transactions
 on the Exchange, yet the purchases at any partic-
 ular time are regarded as and are binding obliga-
 tions and as establishing the price of sugar for the
 day for delivery at such time, and they admit that
 the course of the dealings, the fluctuations in
 prices up and down, are carefully tabulated and
 immediately transmitted by wire to all the 50
 markets of the world and especially to the mar-
 kets of the United States and are published in the
 press of the United States and of many foreign
 countries; but they deny that they or either of
 them causes such transmittal or such publication
 or that they have any part therein beyond per-
 mitting the Western Union Telegraph Company
 and news agencies to obtain the quotations for
 contracts duly recorded on the Exchange. They
 admit that the prices thus established and pub-
 lished are taken by those who own and sell sugar
 and those who purchase sugar, as the basis for
 prices in actual transactions in very many cases,
 but they deny that there is any compulsion or 51
 obligation on such persons to take such prices as
 the basis for actual transactions, and they deny
 that they or either of them speculate or gamble
 in sugar for future delivery, or control the prices
 of raw sugar paid by the refiner, or the prices
 of the wholesaler or jobber, or the prices of the
 retailer, or the prices paid by consumers through-
 out the United States.

And further answering said Paragraph IV, the
 defendants deny that the maintenance and opera-

- 52 tions of these defendants, or either of them, inevitably result in the establishment of prices for raw and refined sugar which are wholly speculative and artificial or without proper regard for the conditions which but for such operations would control said prices, and they allege that on the contrary the conveniences afforded to purchasers, dealers and consumers of sugar by their existence, maintenance and operations, result in the establishment of prices for raw and refined sugar which represent the consensus of the judgment of the world with respect to such prices. They deny that said Exchange and said Clearing Association serve no legitimate or useful purpose in the marketing of raw and refined sugar.
- 53 They deny that they exist, or that either of them exists, only as a means of contracting and speculating with reference to supplies of sugar which in many cases do not exist, or for the purpose of manipulating the price of raw and refined sugar with or without regard to conditions actually obtaining in the industry, or regardless of the law of supply and demand or solely, or at all, for illegitimate gambling or speculative profits to the enrichment of the parties to such operations, or to anyone, or to the injury or detriment of those actually engaged in the business of producing and refining sugar, or to the serious injury of the consuming public, or at all.
- 54

And further answering, they deny that they manipulate prices of raw or refined sugar, or gamble or speculate, or make any profits from dealings in sugar except the charges made to their members sufficient to reasonably meet the expenses of maintaining the Exchange.

V.

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Answering the allegations of Paragraph V of complainant's Bill, defendants deny that during the period from February 1st, 1923, to the date of the filing of said Bill the situation of the United States and of the world in the matter of available stocks of raw sugar was more favorable than at any time within the last three years. They admit that the estimated production of cane and beet sugar for 1921-1922 was approximately 1,000,000 tons greater than in the preceding year, and they allege that there was carried over from the crop of the preceding year approximately 1,200,000 tons, which increased the available supplies for the year 1921-1922 to that extent; but they deny that the estimated production for 1922-1923 is 521,000 tons more than for 1921-1922, and they allege that on the contrary, the estimated production for the year 1922-1923 is less by at least 125,000 tons than for the year 1921-1922. They deny the allegations of the Bill that the United States Department of Commerce estimates the 1922-1923 world production of sugar at 19,511,000 tons, an increase of 1,800,000 tons over 1921-1922, and they allege that the said United States Department of Commerce, by official announcement only made under date of February 12, 1923, estimated the 1922-1923 world production of sugar at only 18,308,000 tons, or 1,203,000 tons less than the amount stated in said Bill. They admit that the table set forth in said paragraph purporting to be a statement of Willett & Gray's estimates for 1922-1923 of the sugar production of the world represents Willett & Gray's said estimates on April 5th, 1923, but they deny that said estimates are con-

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58 elusive or evidence of the actual facts, and they allege that other even more authoritative statisticians estimate the Cuban crop for the year 1922-1923 at more than a quarter of a million tons less than said Willett & Gray.

They admit that the principal source of the supply of sugar for the United States is the island of Cuba, but they deny that the situation of Cuba, with respect to stocks on hand at the date of the filing of said Bill, was or that it now is but little less favorable than during the preceding year. They allege that the estimates of the oldest and perhaps the most authoritative statistician in Cuba, Guma-Mejer, published on the 25th day of April, 1923, show the situation in Cuba as follows, to wit:

	1922	1923
	tons	tons
Receipts to 31st March	1,648,316	2,152,729
Produced and to be produced		
to end of crop	2,348,071	1,517,271
Crop	3,996,387	3,670,000

60 and that said estimate shows that the crop for the present year is at least 326,000 tons less than that of last year and they allege that there was substantially no carry-over from last year to this year as against a carry-over of 1,200,000 tons from 1920-1921 to last year, so that the deficit of available supplies from Cuba for the current year as against the preceding year approximates 1,526,000 tons. They admit the allegations in said Paragraph that at the beginning of 1922, Cuba had 1,200,000 tons of old sugar and that this year she had none; but they deny that the total amount of sugar at all points in Cuba stands at 1.035.-

447 tons, as against 1,327,389 tons at this time last year, or that the deficit of over 1,200,000 tons now amounts to only 291,942 tons. 61

And further answering said allegations, the defendants allege that the stocks in Cuba alone do not regulate the prices of raw sugar, and that the true and serviceable comparison of prices requires the inclusion of sugar in transit to the United States and at the Atlantic ports of the United States as well as sugar in Cuba; and that such a comparison will show that there is a decrease of 309,832 tons for the current year as against the supplies for the preceding year.

And further answering the allegations of said Paragraph V, these defendants admit that the estimates of four of the recognized authorities, to wit: Guma-Mejer, Willett & Gray, Department of Commerce, and H. A. Himely, on the crop for 1922-1923 were, as of the date when they were made, as stated in complainant's Bill, but they allege that since the date of said estimates two of said recognized authorities have revised and reduced their estimates, and that Guma-Mejer on April 25th, 1923, further reduced his estimate from 3,800,000 tons to 3,670,000 tons, and that H. A. Himely, on April 20, 1923, reduced his estimate from 4,102,857 tons, to 3,735,000, or approximately a quarter of a million tons, and these defendants deny that the situation in the ports of the United States, and of the United States, as a whole on April 7-11, 1923, was much more favorable than in April, 1922, or that the stocks were then as stated in said paragraph of the Bill, and they allege that if a correct comparison of said stocks were made there should have been included in said statement the stocks in transit from Cuba and other countries to the United States; and they allege that the estimate of Willett & 62 63

- 64 Gray of April 12, 1923, shows such sugar stocks en route to various Atlantic Ports as 107,000 tons, against the amount of 143,000 tons so in transit during 1922.

Further answering the said paragraph of complainant's Bill, these defendants deny that there existed during this period no economic justification for a sudden or appreciable increase in the price of raw or refined sugar, or any increase, and they allege that there was and is an economic justification for such increase in the prices of raw and refined sugar as has occurred, in the relative prospects of the production and consumption of sugar during the current year, and

65 they allege that the estimates of production at this time so slightly exceed the best estimates of consumption for the same period that there is an insufficient margin of safety to provide for mistaken estimates or for subsequent causes which may vary the actual facts, and that such reasons are a sufficient and adequate cause for the rise in prices.

These defendants further allege that an adequate cause for the abrupt and sudden rise in price on February 13, 1923, over the price on the last preceding day of trading, to wit, February 10, 1923, was the publication in the various newspapers of the country of the estimate of the

66 United States Department of Commerce which was subsequently published in the United States Department of Commerce Reports for February 12, 1923, No. 7, and which said "Commerce Report" bears this heading:

"In 1921-1922 the world's sugar consumption was 500,000 tons greater than production, and the prospects are that it will be 700,000 tons greater in 1922-1923. If these prospects materialize, the heavy

accumulated stocks of the end of the 1921-1922 season will have given way by the end of 1922-1923 to a carry-over below the pre-war normal figure." 67

Said article further contained the following:

"This year starts with another 4,000,000 ton Cuban crop in sight, a big crop in Java and a greatly increased production in Europe. But various decreases elsewhere, notably in the United States, have brought the world production only 125,000 tons higher than it was last year, to supply consumption needs estimated at 350,000 tons more than in 1922, and 725,000 tons larger than production". 68

Said article further stated:

"That the estimated production for 1922-1923 was 18,308,000 tons, and the estimated consumption 19,035,000 tons."

And these defendants further allege that said estimates of the United States Department of Commerce and the publication thereof in all or most of the newspapers of the United States was and is a sufficient economic justification for the sudden and appreciable increase in the price of raw and refined sugar, and that such increases in price are a natural and inevitable result of such publication by the United States Department of Commerce and of the conditions thereby disclosed. 69

Further answering said Paragraph V, these defendants admit that the table therein contained showing the closing prices on the New York Coffee & Sugar Exchange for each trading day from February 1, 1923, to April 16, 1923, is substantially correct, and they allege that said trading for the most part was subsequent to the said pub-

70 lication by the United States Department of Commerce.

Further answering said paragraph these defendants deny that the price movements for raw sugar were immediately reflected in the price of refined sugar, but they admit that the price of refined sugar and also of "spot" sugar advanced contemporaneously with the advances in the price of "futures" on the Exchange, and that the table set forth in the Bill of Complaint showing the refined sugar quotations of five of the principal refiners of the United States out of the sixteen or more refiners in the United States, is substantially correct, and a comparison of the two tables

71 shows that the advances over the same periods of the refiners' prices at times exceeded the advances on the Exchange of future prices; and these defendants further allege that since the filing of said Bill the prices of both refined sugar as fixed by said refiners and the prices of "futures" as traded in on the Exchange have contemporaneously advanced; and these defendants further allege that a further economic reason for the advance in prices lies in the fact that there have been serious droughts in the Island of Cuba which in the opinion of many persons competent to form an intelligent opinion with respect thereto, may lead to a still further shortage in the Cuban crop than at the moment appears.

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And these defendants further allege that the Department of Commerce of the United States on February 12, 1923, estimated on the basis of a Cuban crop of 4,000,000 tons, a carry-over of world stocks at the end of the year 1922-1923 at only 476,000 tons; that since such estimate, the estimates of the Cuban crop by some of the leading authorities have been reduced to 3,750,000

tons and less, and that such reduction will make the carry-over as estimated by the Department of Commerce only 226,000 tons, which is only twelve per cent. of the world's monthly consumption and less than the world's average weekly consumption, and is a dangerously small factor of safety for an article of such universal use as sugar, especially as this carry-over will be scattered all over the world and therefore not as available as if concentrated at a few points of ready distribution as was the case in the beginning of 1922, where the carry-over in Cuba alone was 1,200,000 tons. 73

And these defendants further allege that prior to the World War the world's visible stocks of sugar were always greatly larger, although the consumption was then greatly less, and that the following table correctly shows the world's stocks of sugar on the 30 days of September for the five years preceding the World War: 74

	Tons
September 30th, 1913.....	868,000
1912.....	546,000
1911.....	705,000
1910.....	875,000
1909.....	760,000

as against which the prospective or estimated world's stocks at the end of the present statistical year, September 30th, 1923, amounts to only 226,000 tons, which leaves no room for such accidents to crops as frequently occur when economic situations are like those at present existing. 75

And these defendants further allege that the said rise in prices of sugar, including the rise in the prices of raw sugar, refined sugar, and of "futures" is wholly justified by the economic

76 situations now existing, and that in the regular operation of economic laws some benefit may result from the fact that the rise in prices will tend to decrease consumption and thereby increase the margin of safety now existing between the estimated consumption and production of the world, and will thus tend to avert a shortage or famine in sugar which would undoubtedly lead to extraordinary and unreasonably high prices, with consequent serious loss and injury to both producers, consumers and the public alike.

77 And these defendants deny that the rapid increase in price of raw and refined sugar beginning on February 7th, 1923, and in effect on the date of the filing of the Bill, was or is the direct, or any, result of a combination and conspiracy between these defendants, their officers, members, clients and principals, or any of them, or that they or either of them participated in any purported purchases or purported sales of sugar or that they sought to establish, or have established, artificial or unwarranted prices not governed by the law of supply and demand, or any prices based wholly on speculative dealings not involving the delivery of the quantities of sugar represented thereby, and they deny that any sales or purchases on the floor of the Exchange have
78 been carried on for the purpose or with the effect of unduly enhancing the price of sugar to the enrichment of these defendants, or their members or their members' principals, or to the detriment of the public.

And these defendants deny that since February 7, 1923, an orgy of speculation in raw sugar has been indulged in either through the instrumentality of the Exchange and Clearing Association, or at all; and they deny that enormous quantities of raw sugar greatly in excess of the

quantities customarily dealt in and more than 79
the total stocks of raw sugar then in existence
have been the subject of fictitious or "paper"
sales.

They admit that during February, 1923, the
transactions on the Exchange aggregated ap-
proximately 1,515,050 tons, as compared with
362,850 tons in January, and they admit that dur-
ing said month of February only 300 tons were
actually delivered as a result of transactions on
the Exchange; but they allege that the transac-
tions during February were in "future" con-
tracts for various subsequent months of the year
and did not call for any deliveries in February,
and that the deliveries in February were in com- 80
pliance with contracts made in previous months
calling for delivery in February; and they fur-
ther allege that deliveries in February and con-
tracts maturing in February are always small in
amount, for wholly natural reasons.

Further answering said Paragraph V, defend-
ants admit that during March, 1923, transactions
purporting to involve and involving the purchase
and sale of raw sugar were had on the Exchange
to the extent of 937,900 tons, and that deliveries
amounted to only 1,250 tons, and they similarly
allege that the said contracts during March were 81
"future" contracts calling for delivery during
various subsequent months of the calendar year,
and that the deliveries were upon contracts call-
ing for deliveries during the single month of
March; and they deny that the quantity or num-
ber of said transactions so occurring on the Ex-
change were excessive or unreasonable or ficti-
tious or have been other than legal, valid and en-
tirely regular contracts.

And further answering said Paragraph V, these
defendants deny that the commission charges to

- 82 members of the Exchange, acting as brokers, to their principals, upon each lot (50 tons) dealt in upon the Exchange, are Fifteen dollars for members and Twenty-five dollars for non-members, but they admit that where the transactions involve commissions they approximate said amounts; but these defendants deny that the commission charges on transactions on the Exchange in February amounted to approximately \$900,000, or an average of more than \$40,000 each trading day and allege that they are greatly less than said amounts. These defendants admit on information and belief that the stamp taxes paid the
- 83 United States Government on said transactions amounted to \$35,711. These defendants deny that feverish speculation has given rise to the increase in the prices of raw and refined sugar, as shown by the statement embodied in said Paragraph V of the Bill of Complaint, or that said increases are abnormal or unwarranted; and they allege that the contracts for future delivery made on the Exchange during the months of February and March usually and normally exceed the similar contracts made during the three preceding months, because of the ripening and gathering of the Cuban crop, which commences in December of each year.
- 84 And further answering said Paragraph V of the complainant's Bill, these defendants deny that the price of raw sugar in this country, or the price of refined sugar, has been increased by reason of any fictitious or paper transactions, and they deny that any such fictitious or paper transactions have occurred; and they deny that they or either of them has carried on any speculative operations for the purpose or with the intent of unduly enhancing the price of both raw and refined sugar, or at all or that any opera-

tions carried on by them have accomplished such 85
 result; and they deny that they, or any acts done
 by them or either of them, constitute or are an
 unlawful combination and conspiracy in restraint
 of interstate or foreign commerce in said raw
 sugar or refined sugar; and they deny that said
 acts have resulted or will continue to result in
 the enhancement of the price of raw or refined
 sugar or in a diminished demand for raw or re-
 fined sugar, except that they admit that the en-
 hancement in the price of raw and refined sugar,
 occasioned by the law of supply and demand,
 will automatically tend to limit the consumption
 of sugar, thereby tending to prevent an excess
 of consumption over production. 86

VI.

These defendants deny each and every allegation contained in Paragraph VI of the complainant's Bill.

And these defendants further allege that in the absence of some market for future trading in sugar and the cessation of the stabilizing effect of future trading, the fluctuations in the prices of sugar may become so marked, owing to the lack 87
 of any sufficient basis on which legitimate dealers in sugar can estimate the price or course of prices of said commodity, that serious business disturbances may well result.

And these defendants further allege that the recent advance in the prices of sugar is wholly due to the judgment and opinion of those who deal in said commodity and make a study of the conditions surrounding its production and consumption, that the production of the world is or will

88 be insufficient during the present season to meet the apparent probable consumption of said commodity and that, unless the consumption throughout the world is diminished by higher prices, a famine in said commodity will result, with the consequent abnormal fluctuations in prices and all the disastrous conditions resulting therefrom.

VII.

89 These defendants, further answering complainant's Bill, deny that complainant has set forth sufficient facts to entitle it to either a temporary or permanent injunction, as prayed for in said Bill.

Having thus made full answer as to all matters and things contained in the Bill, these defendants pray to be dismissed hence, with their costs.

VAN VORST, MARSHALL & SMITH,
Solicitors for Defendants,
New York Coffee & Sugar Exchange,
Inc., New York Coffee & Sugar
Clearing Association, Inc.,
25 Broad Street,
New York City.

90

Of Counsel:
JOHN W. DAVIS,
WM. MASON SMITH.

STATE OF NEW YORK,)
 County of New York,) ss.:

EDWARD F. DIERCKS, being duly sworn, deposes and says:

That he is the President of the New York Coffee and Sugar Exchange, Inc., one of the defendants herein; that he has read the foregoing answer and knows the contents thereof; that the same is true to his own knowledge except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

EDWARD F. DIERCKS. 92

Subscribed and sworn to before me
 this 30th day of April, 1923.

JOHN HOWARD KEIM,
 [N. S.] Notary Public.
 New York Co. Clerk's No. 71, Register's No.
 5013,
 Kings Co. Clerk's No. 2, Register's No. 5001.

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STATE OF NEW YORK,)
County of New York,)^{ss.:}

FRANKLIN W. HOPKINS, being duly sworn, deposes and says:

That he is the President of New York Coffee and Sugar Clearing Association, Inc., one of the defendants herein; that he has read the foregoing answer and knows the contents thereof; that the same is true to his own knowledge except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

35

FRANKLIN W. HOPKINS.

Subscribed and sworn to before me
this 30th day of April, 1923.

JOHN HOWARD KEIM,
[N. S.] Notary Public.
New York Co. Clerk's No. 71, Register's No.
5013,
Kings Co. Clerk's No. 2, Register's No. 5001.

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62-63 Appearance for all defendants, filed April 26, 1923, and May 4, 1923.

In the District Court of the United States for the Southern District of New York.

[Title omitted.]

Appearance.

TO THE CLERK OF SAID COURT:

Please enter our appearance as attorneys for the defendants, New York Coffee and Sugar Exchange (Inc.) and New York Coffee and Sugar Clearing Association (Inc.), in the above entitled cause.

Dated April 26, 1923.

VAN VORST, MARSHALL & SMITH,

Attorneys for Defendants,

New York Coffee and Sugar Exchange (Inc.),

New York Coffee and Sugar Clearing Association (Inc.)

Office & P. O. Address, No. 25 Broad St., Borough of Manhattan, New York City.

64 SIR: Please take notice that a notice of appearance, of which the within is a copy, was this day duly entered and filed in the office of the clerk of United States District Court, Southern District of New York.

Dated, New York April 26, 1923.

Yours, &c.,

VAN VORST, MARSHALL & SMITH,

Attorneys for Defendants,

New York Coffee and Sugar Exchange (Inc.), and

New York Coffee and Sugar Clearing Association (Inc.)

Office and post office address, No. 25 Broad Street, Borough of Manhattan, City of New York.

To WM. HAYWARD, Esq.,

United States Attorney.

Due and timely service of notice of appearance, of which the within is a copy, and notice of entry thereof, a copy of which notice is hereon endorsed, is hereby admitted.

Dated, at New York April 26, 1923.

-----,
United States Attorney.

65-66 IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

[Title omitted.]

Appendum.

TO THE CLERK OF SAID COURT:

Please enter our appearance as attorneys for the defendants, T. S. B. Nielsen, Manuel E. Rionda, Frank G. Russell, C. H. Mid-

dendorf, J. H. Walter Lenkau, Justus Ruperti, Louis V. Sterling, William S. Scott, C. H. Stoffregen, August Schierenberg, B. B. Peabody, E. L. Lueder, G. H. Finlay, Franklin W. Hopkins, C. R. Stroud, John A. S. Dunn, Hugh S. Carney, William Bayne, Edward F. Diercks, Leon Israel, Arthur H. Lamborn, and Lewis W. Minford in the above entitled cause.

Dated May 4th, 1923.

VAN VORST MARSHALL & SMITH,
Attorneys for Individual Defendants.

Office and post-office address, No. 25 Broad Street, Borough of Manhattan, New York City.

67 SIR: Please take notice that a notice of appearance, of which the within is a copy, was this day duly entered and filed in the office of the clerk of United States District Court, Southern District of New York.

Dated, New York, May 4, 1923.

Yours, &c.,

VAN VORST, MARSHALL & SMITH,
Attorneys for Individual Defendants.

Office and post-office address, No. 25 Broad Street, Borough of Manhattan, city of New York.

To: WM. HAYWARD, Esq.,

U. S. Attorney.

Due and timely service of notice of appearance, of which the within is a copy, and notice of entry thereof, a copy of which notice is hereon endorsed, is hereby admitted.

Dated at New York May 4, 1923.

U. S. Attorney.

68 Stipulation that answer of corporate defendants be considered as answer of all individual defendants.

United States District Court, Southern District of New York.

[Title omitted.]

It is hereby stipulated that the answer of the corporate defendants in the above entitled action heretofore and on the 30th day of April, 1923, filed herein be considered as and be the answer of the individual defendants in the above entitled action.

Dated New York, May 8, 1923.

WILLIAM HAYWARD,
United States Attorney and Solicitor for the Petitioner.

VAN VORST, MARSHALL & SMITH,
Solicitors for Corporate Defendants and for Individual Defendants.

In Equity No. 26-255.

In the District Court of the United States for the Southern District of New York.

[Title omitted.]

DEFENDANTS' ANSWERING AFFIDAVITS.

(Filed May 7th, 1923, in open court.)

VAN VORST, MARSHALL & SMITH,
Solicitors for Defendants,
25 Broad Street, New York.

JOHN W. DAVIS,
WM. MASON SMITH,
Of Counsel.

70-72 In the District Court of the United States for the Southern District of New York.

[Title omitted.]

Affidavit of Edward F. Diercks.

STATE OF NEW YORK,
County of New York, ss.:

EDWARD F. DIERCKS, being duly sworn, says:

I am and have been since January 24, 1923, the president of the New York Coffee and Sugar Exchange (Inc.), one of the defendants in this action, and I have been for many years a member of the board of managers of said exchange, and have at different times served on many of its important committees. I am thoroughly familiar with the purposes, operations, and workings of the said exchange.

The purposes of the exchange are well expressed in its certificate of incorporation which is quoted in Paragraph I of complainant's bill. From 1885 until December, 1914, substantially the only commodity traded in on the floor of the exchange was coffee, but as a result, in large part, of the closing of the Hamburg and London exchanges in August, 1914, caused by the World War, and the inconvenience resulting to producers, dealers, and consumers of sugar from the absence of any recorded sales showing the consensus of the world's opinion with respect to sugar prices, trading was in December, 1914, commenced in sugar on the floor of the exchange, and the name of the corporation was changed from the Coffee Exchange of the City of New York to the New York Coffee and Sugar Exchange (Inc).

The establishment of trading in sugar on the floor of the exchange and the consequent facility thereby afforded for the registering of the world's opinion with respect to the prices of sugar which thus

enabled the producers, dealers, and consumers of sugar to obtain through the dissemination of such opinion, knowledge with respect to the judgment of those best qualified to know with respect to the probable course of values arising from the conflicting features of relative production and consumption, or supply and demand, fu-

filled the expectations of the exchange members. Sugar trading in futures has continued on the floor of the exchange since its said establishment, with the single exception of the period from August, 1917, to February, 1920, when at the request of the United States Food Administrator the exchange, in common with other exchanges in other food commodities, suspended trading in sugar, for the reason that the Government then undertook to control the prices of food commodities as a war measure, and the exchange readily complied with the request of the Food Administrator to assist him in this respect. The commencement of trading in sugar on the floor of the exchange has filled so great an economic need that the quotation of prices for futures as registered through the instrumentality of the exchange now, as is alleged in the Government's bill, serve as a basis for much the largest part if not all the transactions in actual sugar throughout the world, and orders are executed on the floor of the exchange through members here as brokers which are received from twenty or more different countries of the world.

Trading in sugar is practically confined on the floor of the exchange to trading in contracts for future delivery. Practically all contracts for immediate delivery, known as "spot contracts," take place there, although members of the exchange make such contracts for immediate delivery with each other which are not reported to the exchange. Any private trading in futures, however, by members of the exchange is forbidden by the rules of the exchange, as the purpose of the exchange is to maintain an open and untrammelled market in futures, where prevailing prices in futures are all recorded for the subsequent use and benefit of producers, dealers, and consumers of sugar.

75 Although it is impossible actually to state the proportion since it is within no single man's knowledge or means of knowledge, I am convinced that the greater part of the trading in sugar on the floor of the exchange represents transactions legitimately made by producers, dealers, or consumers of sugar for the purpose of protecting themselves from fluctuations in value of the sugar which they own or have bought or intend to buy. The quantity of sugar dealt in on the exchange necessarily is many times larger than the amount of sugar actually involved in commercial operations for the reason that three or more owners or handlers of such sugar may seek the benefits of future trading to protect them in their legitimate business. The following illustration will serve to make this clear: A farmer or producer in Cuba before his crop is ready for shipment feels that the prices for sugar are satisfactory and that the prices when the crop is harvested may not be so. He accords

ingly sells his estimated crop in the future market as of the date of its probable harvesting. He is hedging against a fall in the value of the sugar which he owns. When the crop is harvested and sold, he closes out his hedging by buying the same amount of sugar at the then prevailing price. If the market has advanced, he loses on his hedge contract because he has to pay more to buy in the contract than the future price at which he sold, but, on the other hand, he makes on the sale of the actual sugar, so that the loss on the one offsets the gain on the other, and he nets only the legitimate and reasonable profit which he should have from the growing of his crop. He is insured against speculative loss or gain resulting from causes over which he has no control.

In the second place, the importer in the United States who 76 buys the crop, we will say, for April shipment realizes that it may not reach him and be available for sale in the United States until June or July. The importer, to protect himself from an undue fall in the price, hedges by a selling contract in the future market on the exchange for July. When the sugar reaches him, he closes out his hedge by buying the same quantity at the then prevailing price, with the same result that his loss or profit on his future purchase of sale is offset by his loss or profit on his actual transaction in sugar, and he is left to enjoy the legitimate or reasonable profit which the transaction contemplated.

In the third place, the importer instead of waiting until the sugar actually arrives from Cuba at a port in the United States, may sell the sugar in transit to a refiner. The refiner may not desire to refine and market the refined sugar for some months after his purchase. To protect himself against undue fluctuations he similarly hedges in the future market in the same manner and with the same result as heretofore stated.

It will thus be seen that in the case supposed, one shipment of sugar has involved three purchases and sales in futures on the exchange, or six transactions, so that in that one instance six times as much sugar was legitimately dealt in on the exchange as was actually the subject of sale and delivery. There may have been several more transactions on the shipment of sugar in question, which would result in other hedging transactions, indefinitely multiplying the amount of sugar dealt in on the exchange as against the actual sugar.

In addition to these actual business transactions in connection with the movement and distribution of the crop, which I believe that even the Government representative will concede to be 77 strictly legitimate and proper, there are transactions in futures on the floor of the exchange by persons of large capital who study the sources of information with regard to consumption and production and forecast the probable course of prices of the commodity. Such persons make contracts for future delivery on the exchange with the purpose and intention of taking advantage of the change in price in the event that their forecast of conditions is cor-

rect, running the risk of grave loss in the event that their forecast is incorrect. Speculation of this sort is of a most useful character. The subject was exhaustively considered by the Industrial Commission of Congress, which in 1901 made an elaborate report (Vol. VI), saying that sale for future delivery based upon a forecast of future conditions of supply and demand is, in the present stage of civilization, an indispensable part of the world's commercial machinery, by which prices are as far as possible equalized and stabilized throughout the world, avoiding abrupt and disastrous fluctuations, to the advantage of both the producer and the consumer.

The subject is also treated with clearness and impartiality in the *Cyclopedia of American Agriculture* in an article on speculation and farm prices, where it is shown that since the yearly supply of wheat, for example, matures in a comparatively short period of time somebody must assume the burden of carrying the crop within the interval between production and consumption. Otherwise the price will be unduly depressed at the end of one harvest and consequently advanced before the beginning of another. Buying for future delivery causes advance in price. Selling short tends to restrain inordinate advances. In each case there must be a
 78 buyer and a seller and the interaction of their trading steadies prices. Speculation brings into the market a distinct class of people possessing capital and special training who assume the risk of holding and distributing the profits on the crops from one season to another with the minimum of cost to producer and consumer. To the producer, trader or manufacturer the act of transferring the risk of price fluctuations to other persons who are willing to assume it has the effect of an insurance. It enables him to use all of his time and capital in the management of his own business instead of devoting some part of them to contingencies arising from unforeseen crop conditions and unforeseen conditions of consumption throughout the world.

The subject is further lucidly treated in the able work of Professor Edwin R. A. Seligman, L. L. D., McVickar, professor of political economy of Columbia University, in his *Principles of Economics*, and by other authorities on economics.

It is true that in addition to these men of capital and intelligence who thus speculate in futures, there is some trading in futures by persons without the same degree of capital or intelligence who make future sales or purchases for the excitement and gamble, and that this class of speculation is undesirable and harmful to those who indulge in it, and usually results in a loss to the person so trading, but this class of transactions is in my opinion from my knowledge of transactions on the exchange relatively immaterial in volume.

The by-laws and rules of the exchange are expressly directed against fictitious or so-called "wash" sales, representing no actual transaction, and against corners or other improper or unfair
 79 or undesirable manipulation of prices. The form of contract in use on the exchange is prescribed by the by-laws and re-

quires an actual delivery, if either of the parties thereto shall so demand. Deliveries are frequently made in performance of future contracts on the exchange, although their volume is relatively small, for the reason that in most of the cases of legitimate use of future trading actual deliveries are unnecessary by reason of the fact that they are hedges against their actual transactions, as hereinbefore explained at length. The officers and board of managers of the exchange conscientiously and scrupulously endeavor to carry out the by-laws and rules of the exchange and the policies embodied in them, and to exercise the power to suspend or expel members, to close the exchange, or to force settlements at prices fixed by the proper committees of the exchange whenever in the judgment of the board of managers such drastic action is required.

Printed copies of the charter, by-laws, and rules of the exchange as amended to the present time have been submitted to the court, and I direct attention to the following provisions of the rules which are designed to prevent cornering and other unfair and undesirable dealing:

Sugar trade rule 1: "Rule 1. By-laws and rules governing transactions in coffee which do not conflict with the sugar-trade rules shall apply to sugar in the same manner as to coffee."

By-laws section 110: "Sec. 110. Whenever through any exceptional contingency not provided for in the by-laws and rules
50 deliveries are not possible and a situation of such extreme urgency arises that a rigid enforcement of contracts generally would be grossly at variance with just and equitable principles of trade, then upon application and after investigation the board of managers, by a two-thirds vote of the whole board, may accord relief in such manner as in their judgment the exigencies of the emergency demand, with due regard, however, to upholding the just rights of both buyer and seller in their obligation to fulfill their contract and to serving the best interests of the exchange."

Floor rule 13: "Rule 13. Trading in puts and calls is not recognized by the exchange.

"Any member who trades or offers to trade in puts and calls upon the floor of the exchange shall be subject to a fine of ten dollars for the first offense, and upon a repetition of the offense may be suspended or expelled from membership under section 46 of the by-laws."

By-laws, section 46: "Sec. 46. Any member of the exchange accused by another member of willful violation of the by-laws or rules, or of any fraudulent breach of contract, or of any proceedings inconsistent with just and equitable principles of trade, or of any conduct detrimental to the best interests of the exchange, or of the State, or other misconduct, and reported to the adjudication committee, shall be given an opportunity to be heard in his defense
81 after due notice of the complaint and transcript of the details of the same shall have been served upon him. If the

complaint be sustained, the adjudication committee shall send a report of the same to the board of managers with their recommendations or suggestions.

"The board of managers, upon being convened for the purpose of acting on such complaint, shall give both complainant and accused an opportunity to be heard, and if in the opinion of the board of managers the complaint be sustained the board may by a majority ballot of the members present, censure, fine or suspend the accused, or impose any two of aforesaid penalties.

"Should, in the opinion of the board of managers, the circumstances warrant expulsion from the exchange, the board of managers may impose such penalty by an affirmative vote of not less than ten members.

"Any officer of the exchange, or member of a committee accused of malfeasance or negligence in office, shall, in like manner, be subject to the judgment of the board of managers, who in addition to any other penalty may by a two-thirds ballot of the members present suspend him from his official duties or remove him permanently from the official position he has previously occupied. If the accused be a member of the board of managers he shall not be allowed to vote in the decision of his case."

Trade rule 3 (in part): "Rule 3. * * * To avoid ab-
82 normal fluctuations of price and injurious speculation incident thereto, trades for future delivery in any month, during any one day, shall not be made at prices varying more than two cents per pound for coffee and one cent per pound for sugar above or below the closing bid price of such month of the preceding business session of the exchange.

"Nor shall trades in any month be made in any one day at an advance of more than two cents per pound for coffee and one cent per pound for sugar above the lowest previous price of such month on that day, or a decline of more than two cents per pound for coffee and one cent per pound for sugar below the highest previous price of such month on that day.

"For the purpose of this rule, the closing bid price shall be not less than the minimum price prescribed therein."

Trade rule 6: "Rule 6. It shall be the duty of the floor committee to proceed against any member who shall be found guilty of reporting false sales in the manner provided by section 46."

Trade rule 18: "Rule 18. In case of failure to deliver the coffee named in the contract when due, the basis of settlement of coffee due on such contract for default in delivery shall be one-quarter of one cent per pound on the entire contract above the net cash quotation for No. 7 spot coffee of the day of delivery, and in case of
83 failure to receive the coffee named in the contract when due, if it shall prove to be the fault of the buyer, the basis of settlement of coffee to be received on such contract for default in receiving shall be one-quarter of one cent per pound on the entire contract above the net cash quotation for No. 7 spot coffee of the

day following the day of delivery; provided, however, that no seller shall be entitled to receive penalty who has not given the stipulated notice of intention to deliver, and no buyer, unless proper demand has been made by him before the expiration of the contract; provided also, that no defaulting party can claim settlement under this rule except upon evidence that the default was unintentional and not premeditated.

"The price of spot coffee shall be fixed by the spot quotation committee on the actual value of No. 7 spot coffee on said day of delivery, with the right to appeal by any party in interest to the board of managers, provided notice of appeal and \$25 be deposited with the superintendent of the exchange within twenty-four hours after the spot quotation committee shall have established the net cash price of No. 7 as prescribed in section 33. Nothing, however, in this rule shall be construed to prevent a settlement by mutual consent."

Sugar trade rule 15: "Rule 15. The provisions of trade rule 18 shall ap'ly to sugar transactions, excepting that the basis of settlement shall be one-quarter of a cent per pound above the quotation for spot Cuba centrifugal 96 degrees average polarization outturn as established daily by the sugar committee."

"No seller shall be entitled to receive penalty who has not given the stipulated notice of intention to deliver, and no buyer unless proper demand has been made by him before the expiration of the contract; provided, however, that no defaulting party can claim settlement under this rule except upon evidence that the default was unintentional and not premeditated."

In this connection it should be noted that the determination of price by the spot quotation committee relates to the price at which settlement must be made between members in case of an unintentional and not premeditated failure or inability to perform a contract, and this price is "the actual value * * * on said day of delivery." The exchange does not attempt to fix prices at which sales must be made, and, except in cases where such action is necessary to prevent the injurious effects of a corner or other illegitimate conduct, the exchange has no power to fix prices in any way or to limit the right and power of members to make their own contracts at their own prices, except as above set forth.

Provision is made by the following rules for preventing inequitable results consequent on strikes, lockouts, and other conditions which tend to prevent or delay deliveries:

Trade rule 21 (in part): "In case of strikes or lockouts, beyond the control of the buyer or seller, which interfere with the delivery or receipt of coffee or sugar on the exchange in accordance with its rules, the fulfilment of the contract for the current month may be made, subject to the approval of the adjudication committee, by the delivery of the coffee or sugar on the last business day of the month without weigher's return on the pro forma basis of 82,500 pounds of coffee and 112,000 pounds of sugar and payment of

an approximate amount therefor or, if affecting the sampling or any act necessary for the preparation of the merchandise for delivery, by the temporary omission of the sampling or usual preparation, provided that the merchandise is in a licensed warehouse and available for delivery, or could have been made available for delivery if such aforesaid conditions had not existed.

"The requirements of the rules affecting the merchandise so tendered in fulfillment of contract must be conformed with promptly when the interference is removed, and final settlement shall then be made."

Trade rule 28 (in part): "Rule 28. Coffee delivered on contract must be weighed, within the seven working days preceding the delivery, unless a weighmaster's return is in force, by a duly licensed weighmaster, whose return shall be attached to the negotiable warehouse receipt when presented for delivery."

Amendment of May 29, 1922 (in part): "The deliverer of
86 raw sugar may have the sugar, intended for delivery on contract, weighed not more than five weeks prior to the date of delivery, provided the weights are checked by a weighmaster selected by the superintendent of the exchange, and the weights so established shall be good for redelivery for a period of six months with an allowance to the buyer by the seller of 350 pounds per lot of 50 tons per month, or fractional part thereof, from the date of the return."

It is my opinion, based upon my familiarity with all the market conditions, that the recent advances in the price of sugar have not been due to any manipulation or concerted action of any sort, but that they have been due to anticipation of a probable limited supply to meet consumption requirements, emphasized by the publication of a report of the United States Department of Commerce, which is found in the issue of "Commerce Reports" under date of February 12th, 1923. I annex to this affidavit as a part thereof a photostat copy of the first page of this report. Whether correctly or incorrectly this report was understood by many persons interested in the sugar market as predicting a substantial shortage in sugar in 1923, and this had a natural effect in raising sugar prices.

This report of the United States Department of Commerce was widely published in the newspapers of the United States, together with more or less sensational headlines, and created in the minds of the public grave and probably well-founded apprehension of a shortage in the supply of sugar.

87 For example, the Journal of Commerce, a conservative and authoritative New York newspaper, under date of February 10th, 1923, contained a comment on this sugar report. The headline was as follows:

"World shortage of sugar is forecast, deficiency for 1923 placed at 250,000 tons, Department of Commerce says consumption needs are 725,000 tons above production with 476,000 tons carry-over."

The newspaper article opened with this sentence:

"Washington, Feb. 9th. A world sugar shortage this year of more than 250,000 tons was officially predicted today by the Department of Commerce."

This report merely emphasized a general and world-wide apprehension of a sugar shortage. On April 18, 1923, as appears from the New York newspapers of the following day, the British Chancellor of the Exchequer issued a warning of the danger of a sugar shortage. The New York Times of April 19th contains an Associated Press report dated London, April 18th, in part as follows:

"The chancellor expressed his belief that the rise in sugar to 30 shillings a hundredweight, or thrice the price in January, 1922, was caused entirely by the prospect of a shortage, and the slightest increase in demand might bring about a panic and send the price far higher."

In an editorial comment under date of April 20, 1923, the New York Times said:

88 "The high price of sugar is at present world-wide. There are complaints about it, and jokes about it, in France. In England it has been thrust into the debate on the budget, the demand of the Labor Party being that the duty on sugar be reduced. In refusing to reduce it the Chancellor of the Exchequer gave it as his belief that the extraordinary rise in the price of sugar is due to the prospect of shortage in the supply. After referring to the disappointing Cuban crop, he said that the production of beet sugar in Europe was certain to be stimulated by the high prices, so that by the turn of the year 'there should be cheaper world sugar' * * * * Not simply in New York, but all over the world, it has been believed by growers, importers, and refiners of sugar that the supply is not equal to the demand. From that belief has sprung the rapid advance in price. This may have been somewhat heightened by speculation; but for the larger part of it the facts of the trade, as they are understood by the leaders of the trade, have been responsible.

"In any such upward movement it is inevitable that there should be a great deal of buying and selling which is wholly speculative. But the speculation follows the facts, or what are believed to be the facts."

The Journal of Commerce in its issue of April 27, 1923, reports an interview with General Menocal, former President of Cuba, in part as follows:

89 "He also said the Government of the United States must know that the Cuban sugar crop will show a marked shortage that nobody expected at the beginning of the harvesting, and that few times in the history of Cuban sugar has it happened, as it is happening now, that most of the producers, as soon as their sugar is made, are selling it. Nobody is keeping it, he says, with speculative intent.

"The actual price of sugar that is so greatly alarming the public and the Government is, in General Menocal's view, a legitimate cause of the shortage of production and the increase in consumption. The price will continue, he adds, as long as consumers demand sugar and are willing to pay whatever they may be asked."

Whether these estimates and apprehensions of a sugar shortage are sound or unsound, they are naturally and inevitably accompanied by a rise in sugar prices.

In Paragraph V of the bill of complaint, at page 18, a table showing closing prices on the exchange for each trading day from February 1, 1923, to April 16, 1923, is given. I give below the spot prices in New York on each of said days, from which it will be seen that the price for spot sugar rose concurrently with the advances in futures and with the refiners' advances for refined sugar. No spot sugar is sold on the exchange, but the exchange keeps a record of prices as determined each day by its sugar committee, for purposes of settlement in accordance with sugar trade rule 50 hereinbefore set forth.

90									
	1923		March	1	5.64	April	1		
February	1	3.52	"	2	5.44	"	2	5.58	
"	2	3.64	"	3	5.52	"	3	5.52	
"	3	3.77	"	5	5.26	"	4	5.52	
"	5	3.71	"	6	5.38	"	5	5.64	
"	6	3.77	"	7	5.40	"	6	5.64	
"	7	3.89	"	8	5.56	"	7	5.72	
"	8	4.01	"	9	5.58	"	9	5.76	
"	9	4.21	"	10	5.52	"	10	5.80	
"	10	4.27	"	12	5.64	"	11	5.69	
Sunday	11		"	13	5.64	"	12	5.80	
Holiday	12		"	14	5.64	"	13	5.89	
February	13	5.26	"	15	5.64	"	14	5.58	
"	14	5.02	"	16	5.64	"	16	5.89	
"	15	4.77	"	17	5.64	"	17	6.02	
"	16	5.02	"	19	5.52	"	18	6.27	
"	17	5.07	"	20	5.64	"	19	6.28	
"	19	5.27	"	21	5.44	"	20	6.14	
"	20	5.14	"	22	5.52	"	21	6.27	
"	21	5.27	"	23	5.52				
"	22		"	24	5.52				
"	23	5.52	"	26	5.38				
"	24	5.52	"	27	5.52				
"	26	5.38	"	28	5.52				
"	27	5.52	"	29	5.52				
"	28	5.52	"	30					
			"	31					

A comparison of the prices for futures on the exchange, shown at page 18 of the bill, with the spot prices and the prices for refined sugar as of the dates selected by the Government in giving its statement of prices of the refiners, as appears on page 19 of the bill, gives the following result, taking the figures of the American Sugar Refining Company for the purposes of comparison and the future prices for the month of May:

91 Table showing advances of spot sugar, refined sugar, and May future quotations, during certain periods.

	Refined sugar.	Spot. sugar.	May future quotations.
Week ending Feb. 8th.....	+\$.30	+\$.49	+\$.42
" " 15th.....	+ 1.25	+ .76	+ .96
Month " March 15th.....	+ 1.05	+ .87	+ .77
Week " 22d.....	- .30	- .12	- .03
Three weeks ending April 12th.....	+ .40	+ .37	+ .18

From the foregoing table it will be seen that the changes in either raw or refined sugar during said periods in every instance exceeded the changes in May futures, whether up or down, and that in the majority of instances, the changes for both raw and refined sugar exceeded the change in May futures; the same is true with respect to prices for future deliveries in the other months referred to in the Government's tables, as a comparison of said tables will show.

The form of contract for raw sugars for future delivery required to be used, and used, by the members of the exchange is to be found at page 48 of the bound by-laws and rules of the exchange, and reads as follows:

"Office of ----- New York.

"Sold for ----- to -----

50 tons of 2,240 lbs. each of sugar in bags, deliverable from licensed warehouse in the Port of New York, between the first and last days of ----- inclusive. The delivery within such time to be at seller's option upon seven, eight or nine days' notice to the buyer. The sugar to be of any grade or grades as specified in section 88a at the price of ----- cents per lb. in bond, net cash for Cuba centrifugal 96 degrees average polarization outturn with additions or deductions for other grades according to the rates of New York Coffee and Sugar Exchange, Inc., existing upon the afternoon of the day previous to the date of the notice of delivery.

"Either party to have the right to call for margins as the variations of the market for like deliveries may warrant, which margins shall be kept good. This contract is made in view of and in full accordance with the by-laws, rules, and conditions established by New York Coffee and Sugar Exchange, Inc."

(Written across the face is the following):

"For and in consideration of one dollar to * * * in hand paid, receipt whereof is hereby acknowledged; * * * accept this contract with all its stipulations and conditions."

There are also separate forms of contracts for duty-free raw sugars and fine granulated refined sugar, to be found on pages 49 and the following pages of said by-laws and rules. The blank space between the words "last days of" and the word "inclusive" are left for the month of future delivery.

It will be seen that the said contract is an absolute contract for actual delivery. Only in the event that the said contract is offset before the date of its maturity can delivery under it be avoided.

Every member of the exchange a party to such contract must
93 be prepared to make delivery or accept delivery under it if required by the other party.

In the affidavit of Walter Lewis, verified the 30th day of April, 1923, and filed on behalf of the Government is set forth a table purporting to show the quantities of raw sugar dealt in by members of the exchange since the reopening of the exchange in February, 1920. In considering the bearing of this table it is important to keep in mind that during 1920, which was the period immediately after the World War, before the period of renewal of normal operations, trading was entirely abnormal and that the fact that the clearing association at that time required a margin ranging as high as \$2,500 per contract of fifty tons, greatly restricted trading. Subsequently, when normal conditions were completely re-established the margin was reduced to a maximum of \$600 per contract. In 1921 the entire Cuban crop was marketed by the Cuban finance committee, a Government body, the appointment of which was directly or indirectly approved by the United States. In 1922 the large carry-over from the preceding year and the fact that the United States was the cheapest market in the world for sugar, together with the cessation of the previous conditions herein mentioned, led to a great increase in trading in futures on the exchange.

The President of the United States, on March 27th of this year, as I am informed, asked the Tariff Commission to investigate and report as soon as possible on the relation of the sugar tariff to the present high prices for sugar. Recently the Tariff Commission submitted its report. In substance the commission reported that

the tariff on sugar was not the cause of the advance but was
94 only one factor in an equation with numerous variables, and that even in normal times numerous factors tend to affect prices of sugar in the United States, to wit (a) the present and anticipated demand of all the countries of the world; (b) the present stocks and anticipated production of all producing countries; (c) the general credit situation; (d) the present and anticipated prices of substitute or derivative products; (e) the fluctuations in foreign exchanges; (f) the changes in tariff rates here and abroad, and other factors.

In my opinion all of these factors entered into the recent rise, but more especially the first two mentioned.

EDWARD F. DIERCKS.

Subscribed and sworn to before me this 4th day of May, 1923.

[NOTARIAL SEAL]

JOHN HOWARD KEIM,

Notary Public.

New York Co. clerk's No. 71; register's No. 5013.

Kings Co. clerk's No. 2; register's No. 5001.

Exhibit to Dierck's affidavit.

408 Commerce Reports. February 12, 1923.

FOODSTUFFS.

Edward G. Montgomery, Chief, Foodstuffs Division.

TREND OF WORLD SUGAR PRODUCTION AND CONSUMPTION.

[In 1921-22 the world sugar consumption was 500,000 tons greater than production, and the prospects are that it will be 700,000 tons greater in 1922-23. If these prospects materialize, the heavy accumulated stocks of the ends of the 1920-21 season will have given way by the end of 1922-23 to a carry over below the pre-war normal figure.]

The outstanding fact of the present sugar situation is that Cuba had only 8,500 tons of old-crop sugar on hand at the end of last December, in contrast with the 1,200,000-ton carry over that was causing grave anxiety a year ago. This means that with its record crop of 4,000,000 tons, Cuba disposed of 5,200,000 tons of sugar in 1922. The distribution was effected through the exportation of over 4,000,000 tons to the United States, some 850,000 tons of which (in terms of raw sugar) went to Europe after refining, and the shipment of another 850,000 tons to Europe direct. Thus Europe was supplied with 1,700,000 tons toward her deficit of 2,300,000 tons, most of the remainder coming from Java. The 3,000,000 tons of Cuban sugar that remained in this country, combined with the production of the United States and its possessions, was just about enough to supply the record United States consumption of nearly 5,500,000 tons (raw sugar).

Cuba's ability in 1922 to distribute both a record crop and a record carry over was thus due in the main to a record consumption in the United States and to a European crop that fell far short of the consumption needs of that continent. This year starts with another 4,000,000-ton Cuban crop in sight, a big crop in Java, and a greatly increased production in Europe. But various decreases elsewhere, notably in the United States, have brought the world production only 125,000 tons higher than it was last year, to supply consumption needs estimated at 350,000 tons more than in 1922 and 725,000 tons larger than production.

World supply and consumption of sugar.—The following table shows the present situation in sugar. Figures are in long tons and in terms of raw sugar.

Comparative world sugar supplies and consumption.

Periods.	Carry over first of year. ¹	Estimated production.	Estimated consump- tion.	Final carry over end of year.
	<i>Tons.</i>	<i>Tons.</i>	<i>Tons.</i>	<i>Tons.</i>
Pre-war.....	750,000	17,500,000	17,500,000	750,000
1920-21.....	1,216,000	16,682,000	16,198,000	1,700,000
1921-22.....	1,700,000	18,183,000	18,680,000	1,203,000
1922-23.....	1,203,000	18,308,000	19,035,000	476,000

¹ This is carry over from one crop to another, and not stocks on any given date.

World sugar production, by continents.—The following table shows the world's sugar production, by continents, in 1921-22, with estimates for 1922-23. These figures include Russia and post-war Poland, which are excluded from the later table of world production and European production and consumption of sugar.

World sugar production, 1921-22 and 1922-23, in long tons of raw sugar.

Continents.	1921-22	1922-23
	<i>Tons.</i>	<i>Tons.</i>
America.....	8,018,000	7,417,500
Asia.....	5,245,000	5,386,000
Australasia.....	364,000	332,000
Africa.....	519,000	558,000
Europe.....	4,037,000	4,615,000
Total.....	18,183,000	18,308,000

Sugar consumption before the war and at present.—Consumption figures for 1923 are necessarily rough estimates at this early date and the figures given are made somewhat conservative to allow for increases over last year in visible and invisible stocks and for unfavorable economic conditions in some countries. Thus, the increase in world consumption in 1922 over 1921 was more than 16 per cent; the estimated increase in 1923 over 1922 is only 2 per cent.

The following table shows the pre-war and 1922 sugar consumption of the principal countries of the world, with estimates for 1923:

Pre-war, 1922, and 1923 consumption of important sugar-consuming countries, in long tons of raw sugar.

Countries.	Pre-war average, 1912-1914.	1922 ¹	1923 estimates ¹
	<i>Tons.</i>	<i>Tons.</i>	<i>Tons.</i>
United States.....	3,800,000	5,461,000	5,500,000
Canada.....	290,000	388,000	400,000
Mexico.....	125,000	110,000	120,000
Argentina.....	210,000	225,000	225,000
Brazil.....	320,000	360,000	380,000
Austria.....	700,000	110,000	120,000
Hungary.....		72,000	75,000
Czechoslovakia.....		309,000	300,000
Belgium.....	200,000	158,000	170,000
Denmark.....	196,000	150,000	155,000
France.....	705,000	806,000	850,000
Germany.....	1,500,000	1,460,000	1,400,000
Italy.....	175,000	300,000	315,000
Netherlands.....	125,000	235,000	220,000
Norway.....	50,000	85,000	85,000
Poland.....	² 100,000	150,000	180,000
Spain.....	127,000	176,000	180,000
Sweden.....	152,000	180,000	180,000
Switzerland.....	120,000	130,000	130,000
United Kingdom.....	1,900,000	1,725,000	1,750,000
Australia.....	250,000	280,000	300,000
British India.....	3,270,000	3,000,000	3,000,000
China.....	447,000	800,000	800,000
Japan.....	323,000	550,000	600,000
All other countries.....	2,505,000	1,460,000	1,600,000
Total.....	17,500,000	18,680,000	19,035,000

¹ 1921-22 and 1922-23 sugar years for the Continent of Europe.

² Former Russian Poland only; the consumption of former Austrian and German Poland is included in the figures for Austria-Hungary and Germany.

World production and European production and consumption.—European consumption of sugar in the pre-war years averaged about the same as its production. Both declined during and after the war period, and both have greatly increased from 1920-21 to the present time. But while the consumption did not decline so sharply as the production, it has recovered to an even greater extent in the last two years and has reached the pre-war total (exclusive of Russia).

96 In Equity No. 26-255.

In the District Court of the United States for the Southern District of New York.

[Title omitted.]

Affidavit of Manuel E. Rionda et al.

STATE OF NEW YORK,

County of New York, ss:

MANUEL E. RIONDA, FRANK C. RUSSELL, C. H. MIDDENDORF, J. H. WALTER LENKAU, LOUIS V. STERLING, WILLIAM S. SCOTT, C. H. STOP-

FREGEN, AUGUST SCHIERENBERG, B. B. PEABODY, E. L. LUEDER, G. H. FINLAY, FRANKLIN W. HOPKINS, EDWARD F. DIERCKS, LEON ISRAEL, ARTHUR H. LAMBORN, LEVIS W. MINFORD, being severally duly sworn, severally depose and say:

I am one of the defendants in the above-entitled action. I do not engage and have not engaged in fictitious or "wash" trades in sugar, and I have not entered and I am not now engaged in any combination, conspiracy, understanding, agreement or concerted activity with any of the other defendants, or with any other person, firm, or corporation for the purpose of manipulating or controlling the price of sugar. In the course of my business I enter or cause to be entered into, contracts for future deliveries of sugar, pursuant to the rules of the defendant, New York Coffee and Sugar Exchange, Inc., pursuant to which actual delivery can be required; such contracts, however, are not entered into for any ulterior purpose of influencing prices, or pursuant to any conspiracy, agreement, or concerted action with any other person, firm, or corporation to influence prices.

C. H. MIDDENDORF.

EDWARD F. DIERCKS.

WM. SHEERMAN SCOTT.

FRANKLIN W. HOPKINS.

LEVIS W. MINFORD.

C. H. STOFFREGEN.

A. H. LAMBORN.

GEORGE H. FINLAY.

LOUIS V. STERLING.

LEON ISRAEL.

AUGUST SCHIERENBERG.

J. H. WALTER LENKAU.

B. B. PEABODY.

MANUEL E. RIONDA.

FRANK C. RUSSELL.

E. L. LUEDER.

Subscribed and sworn to before me this 30th day of April, 1923.

JOHN HOWARD KEIM,

Notary Public.

New York Co. clerk's No. 71; register's No. 5013.

Kings Co. clerk's No. 2; register's No. 5001.

98

In Equity No. 26-255.

In the District Court of the United States for the Southern District of New York.

[Title omitted.]

Affidavit of T. S. B. Nielsen et al.

STATE OF NEW YORK,

County of New York, ss:

THORLIEF S. B. NIELSEN, C. B. STROUD, and WILLIAM BAYNE, Jr., being severally duly sworn, severally depose and say:

I am one of the defendants in the above entitled action. I do not engage and have not engaged in fictitious or "wash" trades in sugar, and I have not entered, and I am not now engaged in any combination, conspiracy, understanding, agreement, or concerted activity with any of the other defendants, or with any other person, firm, or

90 corporation for the purpose of manipulating or controlling the price of sugar. I do not enter and I have not entered into any sugar future contracts.

THORLIEF S. B. NIELSEN,
C. B. STROUD,
WM. BAYNE, JR.

Subscribed and sworn to before me this 30th day of April, 1923.

JOHN HOWARD KEIM,
Notary Public.

New York County, clerk's No. 71; register's No. 5013.

Kings Co. clerk's No. 2; register's No. 5001.

100 In Equity No. 26-255.

In the District Court of the United States for the Southern District of New York.

[Title omitted.]

Affidavit of J. A. S. Dunn.

STATE OF NEW YORK,

County of New York, ss:

JOHN A. S. DUNN and HUGH S. CARNEY, being severally duly sworn, severally depose and say:

I am one of the defendants in the above entitled action. I do not engage and have not engaged in fictitious or "wash" trades in sugar, and I have not entered and I am not now engaged in any combination, conspiracy, understanding, agreement, or concerted activity with any of the other defendants, or with any other person, firm, or corporation for the purpose of manipulating or controlling the price
101 of sugar. I do not enter and I have not entered into any sugar future contracts.

JOHN A. S. DUNN,
HUGH S. CARNEY.

Subscribed and sworn to before me this 3rd day of May, 1923.

[NOTARIAL SEAL.]

JOHN HOWARD KEIM,
Notary Public.

New York County, clerk's No. 71; register's No. 5013.

Kings Co. clerk's No. 2; register's No. 5001.

102 In Equity No. 26-255.

In the District Court of the United States for the Southern District of New York.

[Title omitted.]

Affidavit of Justus Ruperti.

STATE OF NEW YORK,

County of New York, ss:

JUSTUS RUPERTI, being duly sworn, deposes and says:

I am one of the defendants in the above entitled action. I do not engage and have not engaged in fictitious or "wash" trades in sugar,

and I have not entered and I am not now engaged in any combination, conspiracy, understanding, agreement, or concerted activity with any of the other defendants, or with any other person, firm, or corporation for the purpose of manipulating or controlling the price
103 of sugar. I do not enter and I have not entered into any sugar contracts of any kind since the year 1920.

JUSTUS RUPERTI.

Subscribed and sworn to before me this 30th day of April, 1923.

JOHN F. WARD KEIM,
Notary Public.

New York County clerk's No. 71; register's No. 5013.
Kings Co. clerk's No. 2; register's No. 5001.

104 In the District Court of the United States for the Southern District of New York.

[Title omitted.]

Affidavit of J. Aron.

STATE OF NEW YORK,
County of New York, ss:

J. ARON, being duly sworn, says:

I am a member of the New York Coffee and Sugar Exchange (Inc.) and of the New York Coffee and Sugar Clearing Association (Inc.) and a member of the firm of J. Aron & Company. All of the contracts in sugar for future delivery made by me or my firm with another member are cleared through the clearing association. During the month of February, 1923, many such contracts were cleared by me or my firm. To my knowledge, the greater part of such transactions constituted hedges made by parties who were actually engaged in the producing, handling, or distribution of sugar, for the protection of actual sugar transactions. In many cases of such contracts, I have not the means of knowing whether or not they were hedges covering actual sugar transactions.

105 All contracts in sugar for future delivery made by me or my firm are in the form prescribed by the by-laws of the exchange, and all such contracts contemplate actual delivery, and in making such contracts I and my firm are always prepared to make or accept delivery, as the case may be, unless said contracts are offset, or transferred to others prior to their maturity.

In my opinion, the reason for the large number of transactions on the exchange in February for delivery during the various future months, was the fact that the trade then began to realize the probability that the world's production would not meet the world's consumption during the current year, which led to some apprehension stimulated by the reports of the United States Department of Com-

merce and other statistical estimates. When the market for spot sugar, refined sugar, and futures commenced advancing there was immediately a reasonable cause for a large increase in transactions. Many producers, dealers, or consumers of sugar thereupon commenced to protect themselves by future transactions, and as the market continued to advance the natural multiplication of transactions always coincident with an advancing or widely fluctuating market took place, which inevitably multiplied the transactions on the exchange.

J. ARON.

Subscribed and sworn to before me this 4th day of May, 1923.

[NOTARIAL SEAL.]

HERBERT J. GROGAN,

Notary Public.

Kings Co. No. 87.

Cert. filed N. Y. Co. No. 387.

106 Affidavits in identical language with the foregoing affidavit (which have been filed with the clerk but are not repeated herein) were also made by the following named individuals, members of the following named firms:

Name of affiant.	Name of firm.
Leopold S. Bache.....	J. S. Bache & Co.
Frank G. Brown.....	Fenner & Beans.
Albert F. De Pear.....	Ruffner, McDowell & Burch
Edward F. Diercks.....	Siegfr., Gruner & Co.
F. Shelton Farr.....	Farr & Co.
George H. Finlay.....	Geo. H. Finlay & Co.
J. Temple Gwathmey.....	Geo. H. McFadden & Bro.
Victor R. Hess.....	Hess & Hamilton.
A. C. Israel.....	A. C. Israel & Co.
Leon Israel.....	Leon Israel & Bros.
William P. Jenks.....	Jenks, Gwynne & Co.
Walter L. Johnson.....	Shearson, Hamill & Co.
A. H. Lamborn.....	Lamborn, Hutchings & Co.
Jerome Lewine.....	Henry Hentz & Co.
L. W. Minford.....	Minford, Lueder & Co.
Eugene Nortz.....	Nortz & Company.
B. B. Peabody.....	T. Barbour Brown & Co.
George M. Pynchon.....	Pynchon & Co.
T. W. Satterthwaite.....	Arnold, Dorr & Co.
A. Schierenberg.....	Corn, Schwarz & Co.
Robert J. Stewart.....	
Milton E. Walker.....	David Brown & Co.
C. J. Walter.....	C. J. Walter & Co.
Gus K. Worms.....	Newman Bros. & Worms.

An affidavit in identical language (which has been filed with the clerk) was also made by J. D. Pickslay, a member of the firm of

Williams, Russell & Co., whose partner, Walter F. Blake, is a member of the exchange and of the Clearing association.

107 In the District Court of the United States, for the Southern District of New York.

[Title omitted.]

Affidavit of Frank C. Lowry.

STATE OF NEW YORK,
County of New York, ss:

FRANK C. LOWRY, being duly sworn, deposes and says:

I am a member of the firm of E. A. Atkins & Company, and am the same person who at the request of representatives of the Government made an affidavit in this case, verified the 30th day of April, 1923. In said affidavit occurs the following statement:

"That said co-partnership has never purchased any of its requirements of raw sugar on said New York Coffee and Sugar Exchange."

The foregoing statement is correct; but the possible inference
108 from it that my firm does not make contracts on the New York Coffee and Sugar Exchange, is incorrect. While we do not purchase our requirements of raw sugar on the exchange, we have on two occasions sold a moderate quantity of futures on the exchange, with the intention of delivering against these sales certain raw sugar that we held.

I made the above explanation giving the quantities traded in to the Government representative who obtained the first affidavit from me; but he assured me that it was immaterial. I am now informed that it is a factor of importance in the case, and I make this affidavit accordingly.

In my opinion, sugar will be available at lower prices by the beginning of next September. I believe that the present prices are the result of the former low prices and have not been brought about by artificial methods as has been charged. It is easy to denounce the speculator as the cause of high prices. The speculator is interested only in the trend of values, and is quite as willing to operate on the "bear" as on the "bull" market. At the present time we are reaping what we have sowed in the latter part of 1921 and the first part of 1922, when sugar was selling below the cost of production. The high price has induced larger plantings of beet and cane sugar throughout the world and these increased supplies will, in my opinion, be coming along when the new crop is harvested from September to June. Prices here are not relatively higher than elsewhere. Other countries buy their supplies here because they can do better or as well as in any other market. Refiners are selling sugar at 10 cents a pound. The tariff is practically 1 cent a pound higher than it was, so that the increase in the price above

100 that considered by the Food Administration as fair, i. e., 9 cents, is offset by the increased duty.

(Sgd.) FRANK C. LOWRY.

Subscribed and sworn to before me this 3rd day of May, 1923.

[NOTARIAL SEAL.]

JOHN HOWARD KEIM,
Notary Public.

New York Co. clerk's No. 71; register's No. 5018.

King's Co. clerk's No. 2; register's No. 5001.

110 In the District Court of the United States, for the Southern District of New York.

[Title omitted.]

Affidavit of Geo. Lawrence.

STATE OF NEW YORK,
County of New York, ss.:

GEORGE W. LAWRENCE, being duly sworn, says:

I am a member of the firm of Geo. W. Lawrence & Co., coffee brokers and commission merchants, with offices at 87 Front Street, New York City, and am a member of the New York Coffee and Sugar Exchange, Inc., and of the New York Coffee and Sugar Clearing Association, Inc. I am also a former president of the exchange.

I am the member of the exchange referred to in the affidavit of David A. L'Esperance, verified the 30th day of April, 1923, as having called Mr. L'Esperance on the telephone within thirty minutes after the filing of the petition in this cause. While I do not recall the exact language that I used, the substance of what I said is correctly stated in the said affidavit of Mr. L'Esperance.

111 At the time of said conversation neither the exchange nor the clearing association, nor any member of either exchange had, so far as I know, been served with a copy of the bill, and there was a complete ignorance on my part, and, as I believe, on the part of all the members of both the exchange and the clearing association, of the contents of the bill. I had called the counsel for the exchange, Mr. Wm. Mason Smith, over the telephone and been advised by him that he had not seen a copy of the bill and did not know its contents, and that his request to Mr. L'Esperance for a copy of the bill had been refused on the ground that the Government was short of copies. It was, as I verily believe, more than two hours after the news was reported on the ticker before either the exchange or the clearing association or any member of either was able to obtain or see a copy of the bill. The natural consequence of such tactics on the part of the Government was the great disturbance in trading on the exchange which resulted. In the absence of other information than the information given out by the Government in Washington and reported

over the ticker, it was natural that those holding open contracts on the exchange should desire to close them out, with the resulting decline of 75 points in the market from the opening.

(Sgd.) GEORGE W. LAWRENCE.

Sworn to before me this 2nd day of May, 1923.

JOHN HOWARD KEIM,
Notary Public.

New York County clerk's No. 71; register's No. 5013.

Kings County clerk's No. 2; register's No. 5001.

112 In the District Court of the United States for the Southern District of New York.

[Title omitted.]

Affidavit of Charles D. Budd, jr.

STATE OF NEW YORK,

County of New York, ss.:

CHARLES D. BUDD, Jr., being duly sworn, deposes and says:

I am a member of the firm of Meinrath & Company, of New York, associated with Meinrath Brokerage Company, who have branch offices in Kansas City, Mo.; Omaha, Nebr.; Joplin, Mo.; Wichita, Kana.; Oklahoma City, Oklahoma; Dallas, Tex.; Des Moines, Iowa; Chicago, Ill.; Milwaukee, Wis.; Minneapolis, Minn.; St. Paul, Minn.; and are associated with Meinrath-Corbaley Co., of Seattle, Wash.

My firm executes orders on the New York Coffee and Sugar Exchange, Inc., for its customers, located all over the country. The

113 firm of Meinrath Brokerage Co. has issued and has circulated very widely a pamphlet (a copy of which is filed herewith), explaining how hedging operations upon the exchange may be used by distributors of sugar and manufacturers of products containing sugar as a protective operation in their proper business against losses due to fluctuations in prices.

Over ninety per cent of the total number of customers for whom my firm has executed orders on that exchange are regularly engaged in distribution of sugar or are manufacturers who use sugar in the manufacturing of their products.

CHAR. D. BUDD, Jr.

Sworn to before me this 3rd of May, 1923.

[NOTARIAL SEAL.]

L. RAYMOND ROSE,
Notary Public.

New York Co. clerk's No. 173; register's No. 5050.

Kings Co. clerk's No. 3; register's No. 5002.

127 In the District Court of the United States, for the Southern District of New York.

[Title omitted.]

Affidavit of Walter M. Bennett.

STATE OF NEW YORK,

County of New York, ss:

WALTER M. BENNETT, being duly sworn, deposes and says:

I am the first vice president of the Bank of America. The Bank of America frequently makes loans to producers, dealers, or importers of sugar that has been sold or is to be sold to refiners or to other consumers. We are always willing to loan to a greater extent against sugar purchased or owned by the borrower if any loss due to a decrease in the value of the sugar is protected by sales of "futures" on the sugar exchange, because such sales afford protection against possible loss arising from marked fluctuations in price.

We, therefore, regard the opportunities which the sugar exchange gives for the making of future contracts as a valuable economic function and of great importance in connection with the normal trade in sugar. Such contracts for future delivery, in our opinion, have the effect of stabilizing the market, tending to prevent sudden fluctuations.

WALTER M. BENNETT.

Subscribed and sworn to before me this 3rd day of May, 1923.

[NOTARIAL SEAL.]

IRVING L. GRIFFIN,
Notary Public.

Notary public, Queens County No 227.

N. Y. Co. clerk's No. 126; reg. No. 4171.

Kings Co. clerk's No. 92; reg. No. 4077.

Bronx Co. clerk's No. 12; reg. No. 160.

Commission expires March 30, 1924.

129 In the District Court of the United States for the Southern District of New York.

[Title omitted.]

Affidavit of Bernhard D. Forster.

STATE OF NEW YORK,

County of New York, ss:

BERNHARD D. FORSTER, being duly sworn, deposes and says:

I am a vice president of the Bank of Manhattan Company. My bank from time to time makes loans to producers, dealers, and importers of sugar that has been sold either to refiners or to other consumers. We are always willing to loan to a greater extent against sugar so purchased or owned by the borrower, if any loss

due to a decrease in the value of the sugar is protected by a hedge on the sugar exchange, because such a hedge protects us from the possible speculative loss arising from a marked fluctuation in price.

We therefore regard the opportunities which the sugar exchange gives for the making of future contracts as a valuable economic function and of great importance in connection with the normal trade in sugar. Such contracts for future delivery, in our opinion, have the effect of stabilizing the market and preventing to some extent sudden fluctuations.

BERNHARD D. FORSTER,

Subscribed and sworn to before me this 3rd day of May, 1923.

[NOTATORIAL SEAL.]

SAMUEL H. BAILEY,
Notary Public.

Notary Public, N. Y. Co. No. 29.

N. Y. Co. reg. No. 5099.

My commission expires March 30, 1925.

131 In the District Court of the United States for the Southern District of New York.

[Title omitted.]

Affidavit of Walter E. Frew.

STATE OF NEW YORK,

County of New York, ss:

WALTER E. FREW, being duly sworn, deposes and says:

I am the president of the Corn Exchange Bank. My bank frequently makes loans to producers, dealers, or importers of sugar that has been sold or is to be sold to refiners or to other consumers. The price of sugar fluctuates a good deal, and it is therefore a great protection for anyone loaning on sugar to have the borrower protected against any loss due to possible decrease in the value of sugar, by protecting himself by a hedge on the sugar exchange. We, therefore, regard the opportunities which the sugar exchange gives for the making of future contracts as a valuable economic function and of great importance in connection with the normal trade in sugar. Such contracts for future delivery, in our opinion, have the effect of stabilizing the market and tending to prevent sudden fluctuations.

WALTER E. FREW.

Subscribed and sworn to before me this 2d day of May, 1923.

[NOTARIAL SEAL.]

FRED R. HUBER,
Notary Public.

New York County No. 438.

N. Y. County register's No. 4435.

133 In the District Court of the United States for the Southern District of New York.

[Title omitted.]

Affidavit of Joseph W. Harriman.

STATE OF NEW YORK,
County of New York, ss:

JOSEPH W. HARRIMAN, being duly sworn, deposes and says:

I am the president of the Harriman National Bank, N. Y. My said bank frequently makes loans to producers, dealers, or importers of sugar owned by the borrower or on storage in warehouse licensed by the New York Coffee and Sugar Exchange, Inc. We are always more willing to make loans against such sugar if any possible loss due to a decrease in its value is protected by a hedge on the New York Coffee and Sugar Exchange. Such a hedge protects us from the possible loss arising from a marked fluctuation in price. We regard the opportunities which the said exchange gives for
134 the making of future contracts as of great importance in connection with the normal trade in sugar. Such contracts for future delivery, in addition to the protection hereinbefore mentioned, have, in my opinion, the effect of stabilizing the market and of tending to diminish the suddenness of fluctuations in price.

JOSEPH W. HARRIMAN.

Sworn and subscribed to before me this 3rd day of May, 1923.

[SEAL.]

THOROLF D. MACHEL,
Notary Public.

Kings Co. No. 451. Kings Co. register's No. 5194.

Certificate filed in N. Y. Co. No. 277.

Register's No. 5811.

Commission expires March 30, 1925.

135 In the District Court of the United States for the Southern District of New York.

[Title omitted.]

Affidavit of Wm. M. Kingsley.

STATE OF NEW YORK,
County of New York, ss:

WILLIAM M. KINGSLEY, being duly sworn, deposes and says:

I am the 1st vice president of the United States Trust Company of New York.

Banking institutions are always more willing to make loans against sugar and like commodities if any possible loss due to a decrease in its value is protected by a hedge on a recognized exchange such as the New York Coffee and Sugar Exchange. Such a hedge protects the lender from the possible loss arising from a

market fluctuation in price. I regard the opportunities which the said exchange gives for the making of future contracts as of great importance in connection with the normal trade in sugar. Such contracts for future delivery, in addition to the protection
 136 hereinbefore mentioned, have in my opinion the effect of stabilizing the market and of tending to diminish the suddenness of fluctuations in price.

W. M. KINGSLEY.

Sworn and subscribed to before me this 4th day of May, 1923.

H. E. SCHAPER,

Notary Public.

New York Co. No. 84; New York reg. No. 4830.

Cert. filed in Bronx Co. No. 4; Bronx Co. reg. No. 203.

Cert. filed in Kings Co. No. 138; Kings Co. No. 4008.

137 In the District Court of the United States for the Southern District of New York.

[Title omitted.]

Affidavit of H. J. Cook.

STATE OF NEW YORK,

County of New York, ss:

H. J. COOK, being duly sworn, deposes and says:

I am a vice president of the Equitable Trust Company of New York. Said trust company frequently makes loans to dealers in, and producers and importers of sugar that has been sold or is to be sold to refiners or to other consumers. Said trust company is always willing to loan to a greater extent against sugar purchased or owned by the borrower, if we receive satisfactory information or proof that such borrower has protected himself against any loss to arise from a decrease in the value of the sugar by making a sale of sugar for future delivery on the sugar exchange because such
 a sale affords protection against loss arising from a marked
 138 fluctuation in price. I therefore regard the opportunities which the sugar exchange gives for the making of contracts for future delivery as of considerable economic value and of great importance in connection with the normal trade in sugar.

H. J. COOK.

Subscribed and sworn to before me this 4th day of May, 1923.

LEE B. MOREY,

Notary Public, New York County.

130 In the District Court of the United States for the Southern District of New York.

[Title omitted.]

Affidavit of Charles C. Duprat.

STATE OF NEW YORK,

County of New York, ss:

CHARLES C. DUPRAT, being duly sworn, says:

I am the secretary and treasurer of the American Beet Sugar Company, which owns about 27,427 acres of lands in California, Colorado, and Nebraska, and owns six sugar factories in the United States, having together a daily slicing capacity of about 7,300 tons of beets.

My said corporation has not heretofore protected itself against fluctuations in the value of the sugar which it owns by selling contracts for future delivery on the New York Coffee and Sugar Exchange, but the advantages of our so doing have from time to time been discussed, and while we have recognized that there are advantages in so doing, our own situation has not required it.

140 We believe, however, that the opportunity for making contracts for future delivery is of great importance to the sugar trade as a protection against fluctuations in price. The New York Coffee and Sugar Exchange, in my judgment, by affording a market for future transactions under regulations which prevent fraud and unfair dealing, fulfills a great economic function and facilitates the marketing of the sugar crop by keeping the producing and consuming public advised of the trend of world opinion with respect to prices.

CHARLES C. DUPRAT.

Subscribed and sworn to before me this 3rd day of May, 1923.

[NOTARIAL SEAL.]

ARTHUR J. MCQUADE,

Notary Public No. 85, New York County.

141 In the District Court of the United States, for the Southern District of New York.

[Title omitted.]

Affidavit of Chas. Godchaux.

STATE OF NEW YORK,

County of New York, ss:

CHARLES GODCHAUX, being duly sworn, deposes and says:

I am the president of the Godchaux Sugars, Inc. The said company is a planter, manufacturer, and refiner. Its sugar properties comprise about 37,300 acres of land in the heart of the cane-growing district of Louisiana, of which about 17,000 acres are under cultivation. It operates two sugar factories with a daily grinding capacity

of about 4,500 tons of cane, and one sugar refinery with a daily capacity of about 1,500,000 pounds of refined sugar.

The said corporation does purchase at times its future requirements of raw sugar on the New York Coffee and Sugar Exchange, Inc.; and it frequently protects itself against fluctuations in 142 the value of the sugar which it owns or which it may produce from cane grown by them, by selling contracts for future delivery on the New York Coffee and Sugar Exchange, Inc., and regard such hedging as an important protection to our business against fluctuations in price. I regard the medium for making future contracts afforded by the New York Coffee and Sugar Exchange, Inc., as of great importance in saving us from losses and enabling us to make the legitimate profit of our business without the speculative risks which would be involved if such hedging were not possible. In my opinion the opportunities for future trading afforded by the exchange are also a great protection to the grower of cane in the United States, enabling him to sell sugar futures against his prospective crop whenever he considers the price advantageous, without waiting for its actual harvesting.

CHARLES GODCHAUX.

Subscribed and sworn to before me this 4th day of May, 1923.

[NOTARIAL SEAL.]

H. VERNON QUARMBY,
Notary Public, Queens Co.

Queens County clerk's No. 2164.

New York County clerk's No. 1.

New York register's No. 5008.

Kings County clerk's No. 3.

Kings County register's No. 5003.

Commission expires Mar. 30, 1925.

143 In the District Court of the United States for the
Southern District of New York.

[Title omitted.]

Affidavit of Horatio B. Young.

STATE OF NEW YORK,

County of New York, ss.:

HORATIO B. YOUNG, being duly sworn, deposes and says:

I am the secretary of the W. J. McCahan Sugar Refining & Molasses Company, of Philadelphia, Pa., which company refines about 3½% of the sugar refined in the Atlantic ports of the United States.

The said company does purchase some of its future requirements of raw sugar on the New York Coffee and Sugar Exchange, Inc.; and it frequently protects itself against fluctuations in the value of the sugar which it owns, by selling contracts for future delivery on the New York Coffee and Sugar Exchange, Inc., and regards such hedging as an important protection to our business

144 against fluctuations in price. I regard the medium for making future contracts afforded by the New York Coffee and Sugar Exchange, Inc., as of great importance in saving us from losses and enabling us to make the legitimate profit of our business without the speculative risks which would be involved if such hedging were not possible.

HORATIO B. YOUNG.

Subscribed and sworn to before me this 4th day of May, 1923.

[N. S.]

H. VERNON QUARMBY,
Notary Public, Queens Co.

Queens County clerk's No. 2164.

New York County clerk's No. 1.

New York register's No. 5008.

Kings County clerk's No. 3.

Kings County register's No. 5003.

Commission expires Mar. 30, 1925.

145 In the District Court of the United States for the Southern District of New York.

[Title omitted.]

Affidavit of John Gilmour.

STATE OF NEW YORK,

County of New York, ss.:

JOHN GILMOUR, being duly sworn, says:

I reside in Brooklyn, New York, and have been employed for about ten years by the Czarnikow-Rionda Company, with
146 special reference to sugar statistics, and I have been in the sugar business for upwards of thirty years. The said Czarnikow-Rionda Company is a large sugar merchant and sugar brokerage house in New York and represents both producers and refiners of sugar, and I keep myself thoroughly posted with respect to the sugar market and world conditions affecting sugar and especially the conditions in Cuba.

In my opinion the rise since February 1st, 1923, in the prices of raw spot sugar, of refined sugar, and of contracts for future delivery of sugar have been due to the realization by those interested in sugar values of the economic factors affecting the relative production and consumption of the commodity. I have prepared and annex to this affidavit, making the same a part hereof, a memorandum showing the economic causes for the recent increase in the price of sugar. All of the statistics appearing in said memorandum have been taken from recognized authorities on sugar conditions, and I verily believe the same to be in all respects accurate and true, and the conclusions therein stated to be correct.

JOHN GILMOUR.

Sworn to before me this 4th day of May, 1923.

[NOTARIAL SEAL.]

JOHN HOWARD KEIM,
Notary Public.

New York Co. clerk's No. 71; register's No. 5013.

Kings Co. clerk's No. 2; register's No. 5001.

MEMORANDUM OF ECONOMIC CAUSE OF RECENT PRICE ADVANCE

To those who had made a serious and careful analysis of the
 147 sugar situation earlier in the season, the rise in the price of
 sugar to its present level has occasioned no surprise, and
 this statement is made with due allowance for the unforeseen
 drought in Cuba which so seriously curtailed production there.
 That the world's consumption has been gradually increasing
 and overtaking production is an indisputable fact, and the time
 has come when there is no margin of safety between supply and
 demand to offset such unforeseen accidents to crops such as ex-
 perimented by Cuba from drought.

The present situation was forecast by one of the foremost and
 highly respected sugar issues, the International Sugar Journal, in
 its issue of December, 1922, from which we quote the following:

" PRODUCTION AND CONSUMPTION.

" Last month we published Willett & Gray's preliminary estimates
 of the 1922-23 world's sugar crops. They revealed, as that eminent
 firm of statisticians themselves remarked, that there is very little
 change indicated for any of the important sugar crops of the world,
 particularly those of cane sugar, which total practically the same as
 those of 1921-22. In the continental United States the output of
 beet and cane is expected to be some 335,000 long tons less than last
 year; on the other hand, Europe is expected, bar accidents, to
 increase the beet sugar output by 644,000 long tons.

" The net result of all the sugar crops is estimated by Willett &
 Gray as at most an increase of some 362,000 tons. Unfortunately,
 the world is faced by the fact that as compared with last
 148 December the carry-over into 1923 is to be less by the huge
 amount of one million to one and a half million tons. Given,
 therefore, a maintenance only of the 1922 demand for consumption,
 a shortage will develop during 1923 which is bound to send the
 price of sugar up still higher. There are, it is true, those who argue
 that the 1922 consumption is not a true one, but is the result of the
 restocking of invisible supplies which had diminished during the
 abnormal post-war years, and that therefore 1923 will show a
 decreased consumption. But there is apparently little or no evidence
 to support this view, while the contrary is indicated by the fact that
 the trade distributing channels generally are too well stocked. More
 probable is it that the Old World is getting out of the restrictive
 groove in which the war landed it and is seeking a bigger per capita
 consumption, while the New World, so far as the United States is
 concerned, has developed a permanently increased demand for
 sugared drinks to take the place of the prohibited alcoholic beverages.

" The result is that in 1923 sugar consumption will have over-
 taken and passed production. The producer will hence be in receipt

of a much more remunerative price for his sugar, which will inter alia give him the means to enlarge his output, either by laying down more efficient machinery, or else by increasing his cane crops and milling a large output of cane."

The above requires no comment, subsequent developments having proven the accuracy of this forecast. This authority also made the following statement in its issue of April, 1921:

149 "We expressed the opinion a few months ago that if sugar was as cheap as in pre-war days and other things were fairly equal, the present consumption in the world might be assumed at as much as 25,000,000 tons per annum."

In full realization of the fact that there would be a supply barely sufficient to meet the world's actual needs, foreign buyers entered the American market for Cuban sugars early in the year, and the prices those buyers were willing to pay were frequently in excess of what American buyers would pay, to the extent of the freight that it would cost producers to transport sugar from Cuba to the United States. Foreign purchasers of Cubas are variously estimated at between 350/450,000 tons, a quantity that can hardly be spared to go away from the United States markets. It was simply a matter of price, and producers, as a whole, parted with sugar to any buyers that were ready and willing to absorb it at the time. Foreign buying was invariably in advance of interest shown by the American refiners, who would have received the preference had they then exhibited the inclination to meet foreign competition.

The New York Coffee and Sugar Exchange proved to be a true reflection of the consensus of opinion in regard to the strength of the sugar situation, and the advance in price there was the result of the conclusion reached by sugar people the world over that a condition was developing which was rapidly tending toward a scarcity of the article. To state that these "future" operations were simply a matter of paper speculation is entirely to try to cloud the question, for the largest sellers at all times were those
150 who represented actual producers, or those who had bought actual sugar for arrival in the United States at a future date and sold "futures" on the exchange as a hedge. Many manufacturers and dealers who realized the strength of the situation also placed buying orders, they being unable to contract with refiners for the delivery of refined sugar for the more distant future, when it would be required for their manufacturing needs, to fulfill contracts for preserved fruits, candy, soft drinks, and many other things in which sugar is used.

That only a small quantity of sugar is actually delivered against contracts is true, but this only states half the case. Buyers protect future needs by buying contracts in the future market, and when the month of delivery arrives, they sell the contracts and buy the refined. The London and Hamburg exchanges, before the war, rarely received notices of delivery, although millions of tons were con-

tinuously dealt in there by buyers and sellers of all kinds in all quarters of the globe. Operations of this kind are customary in all commodities, and are so well known throughout the world that to deny their legitimacy and economic value is to deny the existence of economic truth.

Sugar to-day is suffering from the result of the financial collapse of 1920 in this country and in Cuba which caused such abject distress to practically all interests. The Cuban Government in 1921 attempted to alleviate the distress of its people by a control of its crop, but the financial situation had not been straightened out sufficiently to afford the necessary relief. Then came 1922, with Cuba selling sugar at prices which showed a terrific loss to the producers who, owing to lack of cash and credit, sacrificed their production at 151 prices so much below cost that many experienced the dread experience of failure. How could it be expected in times like those that the necessary new planting of cane could be made as well as replacements and additions to factories? The effect is being experienced to-day in that there is no reserve or surplus cane to be ground in Cuba, and mills are forced to close with short crops in most cases.

To deny the seriousness of the situation is to store up trouble for the future, for there appears to-day no great reserve of sugar as heretofore, and the world must face a situation in 1923 when sufficient sugar to go round will only be had by the refusal of the people to be stamped into buying more than they need for their actual requirements.

CONDITIONS IN CUBA.

The crux of the situation is after all the island of Cuba—the largest producer of sugar in the world. An analysis of its situation is desirable and essential. According to the oldest statisticians in the islands, Messrs. Guma-Mejer, the situation is as follows:

	1922	1923
	<i>Tons.</i>	<i>Tons.</i>
Receipts to 31st March.....	1,648,316	2,152,729
Produced and to be produced to end of crop.....	2,348,071	1,517,271
Crop.....	3,996,387	3,670,000

Nearly 326,000 tons less than last year, and if to this we add the carry-overs from the 1921 crop of about 1,200,000 tons, we find a deficit in supply of something like 1,526,000 tons.

In the writ applied for by the United States attorney at New York, reference is made to the stocks in the United States, which

show an apparent excess over last year. It would be better for a correct exposition of the situation to add the stocks in Cuba and the "afloats" as well. The supplies so arrived at will convince even the most skeptical that, no matter how figured, supplies are smaller than a year ago, as the following will prove:

Stocks in all U. S. refining ports and in all U. S. shipping ports at latest uneven dates, in tons.

	1923	1922
U. S. Atlantic ports (New York, Boston, Philadelphia, Baltimore), April 11th.....	<i>Tons.</i> 199,546	<i>Tons.</i> 216,328
New Orleans—Apr. 7th.....	38,656	27,562
Savannah, Galveston—Apr. 7th.....	17,495	13,742
San Francisco—Apr. 7th.....	35,767	15,722
Cuba, all points (old & new crop) Apr. 7th.....	291,464 1,035,447	273,354 1,327,389
	1,326,911	1,600,743

Decrease from last year 273,832 tons.

The sugar en route to Atlantic ports, as estimated by Willet & Gray, April 12th, are as follows:

153 Afloats, estimated, to the U. S. from Cuba and Porto Rico.....	85,000
Philippines.....	20,000
Various.....	2,000

Total, 107,000 tons, against 143,000 tons last year.

	1923	1922
If we take supplies as above.....	<i>Tons.</i> 1,326,911	<i>Tons.</i> 1,600,743
Add afloats.....	107,000	143,000
	1,433,911	1,743,743

A decrease of 309,832 tons.

Or, if we simply take the U. S. stocks, plus afloats, we get:

	1923	1922
Stocks U. S.	<i>Tons.</i> 291,464	<i>Tons.</i> 273,354
Afloats.....	107,000	143,000
	398,464	416,354

A decrease of 17,890 tons.

A decrease in supplies of 17,890 tons and not an apparent increase of 18,110 tons, as indicated in the petition. In any event, what was hoped to be gained by setting forth the stocks in the petition is nullified when it is duly considered what an insignificant stock actually exists in the United States to take care of its people. We

shall take Willett & Gray's figures for this purpose, and
154 the following table will no doubt be a decided surprise to many:

Year.	Consumption.	Per capita, lbs.	Average per month.
1922.....	5,092,758	103.18	424,000
1921.....	4,107,328	84.47	342,000
1920.....	4,084,672	86.56	340,000
1919.....	4,067,671	85.43	339,000
1918.....	3,495,606	73.36	291,000

Departing from the local situation and taking a broad world survey, it can be proven without the slightest contradiction that the hesitation in the enlargement of production in Cuba in 1920 and 1921 is now shown in the reduced supply to meet the world's increasing needs.

Taking the U. S. Department of Commerce figures of February 12, 1923, we find the following estimate of world sugar production, 1921-22 and 1922-23.

Continents.	1921-22	1922-23
America.....	8,018,000	7,417,000
Asia.....	5,245,000	5,386,000
Australasia.....	364,000	332,000
Africa.....	519,000	558,000
Europe.....	4,037,000	4,615,000
	18,183,000	18,308,000

(A) Based on a 4,000,000-ton crop in Cuba which has been materially shortened by a prolonged drought.

(B) The sugar crops of the world as estimated by Willett & Gray in the circular of April 5, 1923, show a production of 18,208,325 tons, based on a Cuban crop of 4,000,000 tons. This estimate
155 compares with a production of 17,686,699 tons in 1921-22, or, say, an increase of 521,626 tons.

(C) At the beginning of 1922 Cuba had a stock of 1,200,000 tons of old crop sugar unsold, practically the only large reserve in the world, while January 1, 1923, saw no carry-over there to speak of.

The Department of Commerce and Willett & Gray, therefore, apparently coincide as to world's production of sugar.

Again quoting from the same bulletin of the Department of Commerce, we find—

Pre-war, 1922 & 1923, consumption of important sugar-consuming countries.

Countries.	Pre-war average, 1912-14.	1922 ¹	1923 estimate. ¹
	<i>Tons.</i>		
United States.....	3,800,000	5,461,000	5,500,000
Canada.....	290,000	388,000	400,000
Mexico.....	125,000	110,000	120,000
Argentina.....	210,000	225,000	225,000
Brazil.....	320,000	360,000	380,000
Austria.....	700,000	110,000	120,000
Hungary.....		72,000	75,000
Czecho-Slovakia.....		309,000	300,000
Belgium.....	200,000	158,000	170,000
Denmark.....	106,000	150,000	155,000
France.....	705,000	806,000	850,000
Germany.....	1,500,000	1,460,000	1,400,000
Italy.....	175,000	300,000	315,000
Netherlands.....	125,000	235,000	220,000
Norway.....	50,000	85,000	85,000
Poland ²	100,000	150,000	180,000
Spain.....	127,000	176,000	180,000
Sweden.....	152,000	180,000	180,000
Switzerland.....	120,000	130,000	130,000
United Kingdom.....	1,900,000	1,725,000	1,750,000
Australia.....	250,000	280,000	300,000
British India.....	3,270,000	3,000,000	3,000,000
China.....	447,000	800,000	800,000
Japan.....	323,000	550,000	600,000
All other countries.....	2,505,000	1,460,000	1,600,000
	17,500,000	18,680,000	19,035,000

¹ 1921-22 and 1922-23 sugar years for continent of Europe.

² Former Russian Poland only; the consumption of former Austrian and German Poland included in the figures for Austria-Hungary and Germany.

High prices may reduce consumption, but in the United States and Canada this will depend upon the size of the fruit crops, the summer weather, and the spending powers of the masses.

Further quoting from the pamphlet of the United States Department of Commerce, of February 12, 1923, we find the following table:

Comparative world supplies and consumption.

Periods.	Carry-over first of year. ¹	Estimated production.	Estimated consump- tion.	Final carry-over end of year.
	<i>Tons.</i>	<i>Tons.</i>	<i>Tons.</i>	<i>Tons.</i>
Pre-war.....	750,000	17,500,000	17,500,000	750,000
1920-21.....	1,216,000	16,682,000	16,198,000	1,700,000
1921-22.....	1,700,000	18,183,000	18,680,000	1,203,000
1922-23.....	1,203,000	18,308,000	19,035,000	476,000

However, it is obvious that with the reduction in the outturn of the Cuban crop from 4,000,000 tons as estimated herein, to 3,750,000 tons, a carry-over of only 226,000 tons can be expected, unless a very material reduction in consumption is in evidence. That there will have to be a curtailment of the use of sugar is demonstrated by these figures, as a carry-over of 226,000 tons, or even 476,000 tons, is too small a factor of safety in such an article of universal use as sugar. Moreover, it must be borne in mind that this carry-over will be scattered all over the world and, therefore, not as readily available for use as if concentrated at a few points of ready distribution, like Cuba, for instance, at the beginning of 1922.

We are also assuming that the beet crops now being planted (which figures will appear in 1923-24 statistics) in Europe and the United States will meet no disaster whatever, but will be grown under the most favorable conditions of soil, weather and cultivation—surely a somewhat speculative basis upon which to depend for an abundance of such a necessary foodstuff as sugar, for the coming campaign.

In pre-war years, the world's visible stocks were always larger, as shown in the following table, and clearly demonstrate that there is at present a situation which needs the most careful handling lest it develop into a condition of panic, which would serve no good purpose and result in a smaller repetition of the sugar debacle of 1920.

In the five years preceding hostilities we find the following records of stocks on 30th September and subsequent dates to 31st December:

World stocks.

	30th Sept.	31st Oct.	30th Nov.	31st Dec.
	<i>Tons.</i>	<i>Tons.</i>	<i>Tons.</i>	<i>Tons.</i>
1913.....	868,000	2,043,000	3,691,000	4,315,000
1912.....	546,000	1,830,000	3,341,000	4,150,000
1911.....	705,000	1,513,000	2,796,000	3,036,000
1910.....	875,000	1,896,000	3,298,000	3,878,000
1909.....	760,000	1,590,000	2,866,000	3,188,000

158 Compare the foregoing visible stocks with the prospective carry-over of 1923, amounting to only 226,000 tons, and it gives one food for serious thought.

In fact prices are moderate compared to what they may be once the public realize the full value of a situation which leaves no room for such accidents to crops as frequently occur when statistical situations like the present develop.

When the United States entered the World War in 1917, and in line with the general policy of the American Government, brought all essential commodities under control, the Cuban Government

its desire to help, sold through its representatives in the United States its entire production of the 1918 crop at the low price of 4.60 cents per pound, free on board at loading ports in Cuba.

With the continuation of hostilities, the Cuban Government once more came forward and sold its 1919 sugar crop to the American Government at 5.50 cents per pound, f. o. b. Cuba, and on this sugar the latter made some \$40,000,000 from its resale to the people. In full realization of the chaos that would result from the sudden transition from Government control to a free and open market, the Cuban commission came forward for the third time and tendered the crop of 1920 to the United States Government; but the failure of the latter to act promptly caused the sugar situation to get out of hand. It is interesting at this time to read this formal tender of July 29, 1919, of the Cuban crop, of which the following quotation is almost uncanny in its forecast:

"If, on the contrary, the opportunity to serve—not the American people alone, but the universal welfare—is for any reason, 150 technical or otherwise, not availed of through one medium or another, there is not a community anywhere in America, in Europe, or Asia that will not feel the consequences of our failure to provide a stable price for this most necessary article of human consumption."

In 1919 and 1920 a highly inflated condition existed in the United States, of which the Federal banking authorities were well aware, but it was not considered best at that time with the large number of men being demobilized, to have the country deflated and have great unemployment and resulting discontent. Sugar was considered such an essential and desirable commodity at that time, that in some communities the retail prices of sugar were 30/35 cents per pound. As usual, when prices get out of line, they bring about their own remedy, and the bubble burst. From May 25th, 1920, when 22½ cents per pound, cost and freight, was paid, the decline in price was continuous. While Cuban producers are presumed to have benefited by the abnormally high price ruling, only a small number of producers obtained it, as an examination of the reports of Cuban sugar producers will show that the average realized was very much lower, while the cost of production had advanced to levels that were startling.

The result of the high prices in 1920 was the importation into the United States of about 900,000 tons from all quarters of the globe, principally the Far East, where consumers can not afford to eat high priced sugar. Deflation in the United States brought ruin to sugar producers in Cuba, who had steadfastly upheld the United States Government during the great emergency, by selling their commodity at low prices.

160 Banks in Cuba failed and that country was left practically without credit or money. The crop of 1921, grown under the general request of the United States to producers to increase the output of foodstuffs, failed to find its usual ready outlet for

many and varied reasons, and out of the production of 3,936,040 tons an unheard of carry-over in Cuba of 1,200,000 tons was brought into 1922, and the price dropped as low as 1.75 cents per pound, cost and freight. This, however, was so cheap that almost the entire world readily absorbed this carry-over, plus the 1922 crop of 3,996,367 tons and 1923 began with a supply materially reduced from the year before, and this in the face of greatly improved conditions here and in Europe.

Reference has already been made to the consumption of the United States, and in this it would seem desirable to comment hereupon the estimate of 4,107,328 tons made by Willett & Gray for the year 1921. In their figures they failed to take into account the heavy imports of full-duty sugar which was not all consumed in 1920, a good part of which was carried over into 1921, and then consumed. There was accordingly a much higher consumption during the latter year than shown in the estimate, and various estimates made by other trade interests indicate that it was around 4,700,000 tons of sugar.

If sugar to the consumer had sold in former years at a price that was not an arbitrary one, because of war regulation and subsequent conditions, but one based on a fair margin of profit to producer, farmer, wholesaler and retailer, it is unlikely that much complaint would now be heard from the consumer. In the final analysis, the expenditure by a family of five, based on refined sugar at say 12 cents per pound, amounts to about \$1.20 per week or the cost of 161 attending one moving-picture show. How can sugar be considered as expensive, even at the high price of 12 cents per pound, which price has not yet been reached by at least 2 cents per pound?

THE ECONOMIC BENEFIT OF EXCHANGES.

The recent application of United States Attorney General Daugherty to the courts for an injunction to restrain further trading in sugar on the floor of the New York Coffee and Sugar Exchange, has brought to light a situation with which it is desirable and essential that the public should be acquainted.

In the first place, exchanges, far from being the marts of manipulation and conspiracy to unduly enhance prices, are a barometer of the conditions surrounding the particular article dealt in there. The supply and prospective demand, weather conditions, crops, economic conditions, etc., are all studied and considered, and it is the majority opinion which prevails, whether rightly or wrongly, which makes the price, frequently far in advance of the events which had been anticipated and discounted. Commodity exchanges serve a useful purpose in the community, being centers of operations where producers, refiners, manufacturers, and others can either sell or buy as a hedge against the future. When prices are low, the buying generally prevails and prices are advanced to a level which the many minds

operating believe to be warranted by the conditions of crops, weather, consumption, and economic conditions, and this buying encourages the producer, who otherwise might be forced to control his production by reason of unremunerative prices preventing him from planting. If prices are advanced to too high a level, selling is in 102 evidence, thereby preventing prices from getting to a peak not justified by the conditions referred to. Exchanges serve the very useful purpose of saving the producer when prices are low and helping the consumer when prices are high. This is rather simply explained by Professor E. R. Seligman in his publication, *Principles of Economics*, from which the following are extracts:

Extract from the *Principles of Economics*, with special reference to American conditions, by Edwin R. A. Seligman, LL. D. McKim, professor of political economy, Columbia University.

SPECULATIVE PROFITS—NATURE.

"By speculation is meant the purchase or sale of anything in the hope of profit from an anticipated change in its price. It differs from ordinary trade only in degree, for all profit, as we have seen, has an aleatory element. The difference, however, consists in the fact that speculation concentrates and intensifies the forces which affect demand and supply.

"Speculation was in former times chiefly place speculation. The practice of buying in one market and selling at almost the same time in another has been lessened by the modern means of transportation and communication, whereby price fluctuations between places have been minimized. It exists today chiefly in the form of 163 'arbitrage' of stock or commission brokers, and its success depends on the rapidity with which their telegraphic facilities may enable them to anticipate the published quotations on the exchanges. The more important form at present is time speculation based on price fluctuations after the lapse of an interval of time.

"Speculation, again, may be sporadic or regular. Sporadic speculation is almost as old as business itself. It is the result either of a popular frenzy or of an deliberate scheme to take advantage of a temporary occurrence. An example of the first kind is the tulip mania in seventeenth-century Holland, when the most fabulous profits were made by those who had anticipated the short-lived demands for bulbs. So also the occasional speculative 'booms' in real estate at present are the cause of enormous profits, followed by corresponding losses when the bubble is pricked. In such cases speculation is due to changes in demand, which it is almost impossible for individuals to foresee or to control. Supply, on the other hand, lends itself more readily to manipulation, and deliberate attempts are not infrequently made to accomplish this end. From the efforts of Joseph to buy up the corn crop in Egypt, and from the decision of the Greek philosopher to show his practical wisdom

by purchasing in advance of the vintage all the winepresses, down to the modern pools and rings, attempts to corner the market are occasionally found. While sometimes successful in minor cases, they commonly fail when on a large scale. The failure is due (a) 164 to the immensity of the capital required, (b) to the difficulty of procuring and retaining trusty confederates whose selfish interests may often be best subserved by selling when their principal is buying, (c) to the fact that rising prices will bring to the market all the reserved stock, and (d) to the danger of the substitution by the consumer of some cheaper commodity. Thus, while the successful corner in Harlem stock in 1863 laid the foundation of the Vanderbilt fortunes, the three most picturesque and gigantic attempts of the last two decades—the Chicago Leiter corner in wheat, the Paris Secretan corner in copper, and the New York Sully corner in cotton—have all been failures, resulting in the ruin of the speculators.

“Both classes of sporadic speculation are in the end socially disadvantageous, because the speculative price is driven far above or below the true value, with resulting losses in the process of restoring the equilibrium. The inordinately high cotton prices, due to the speculative attempts of 1904, well nigh produced a crisis in the cotton industry in England and New England, and while the southern planters temporarily benefited, the high profits led to such an increased acreage during the next season that the price fell below the cost of production. A moderately remunerative price would have been preferable to these sudden alternations of large profits and extreme losses.

“It would, however, be a mistake to assume that all speculation is of this character. Speculation could never have become a 165 part of the normal business life of modern times if it had simply these defects and antisocial characteristics. The modern stock and produce exchanges have a definite economic function to perform.

“Speculation occurs in securities or commodities. The qualities which render a commodity peculiarly fit for regular speculative dealings are three in number: (a) it must be a staple, with a large and regular production; (b) it must be homogeneous in quality, so that any unit will be as acceptable as another; (c) it must be capable of ready definition and measurement. Accordingly, we find exchanges devoted to cereals, like wheat, rye, barley, corn, and oats, to coffee and sugar, to cotton and tobacco, to iron and tin. In the case of securities all those qualities are obviously present. The chief transactions on both the stock and produce exchanges may be summarized as follows:

“If the prices in the estimation of the speculator are high but tend downward, he will ‘sell short,’ that is, engage to deliver at a future time goods not yet in his possession. If, when the time arrives he can purchase at the anticipated lower price, the difference constitutes his

profits. Or the same result can be reached by a 'covering' contract, so-called because he covers the short sale by making a purchase at a somewhat lower price deliverable at the same time. On the other hand, if prices are low but in his estimation tend upward, he will 'buy long,' that is, buy more than he would care to take at present; and when the goods are finally delivered he can sell at a profit.

166 Or, as in the preceding case, he can at once make a 'realizing' or 'liquidating' sale at a higher price, deliverable at the same time. Because the 'shorts' speculate for a fall they are called 'bears' (who pull down); while the 'longs,' who speculate for a rise, are called 'bulls' (who toss up). When a substantial interval of time elapses between the two parts of the transaction, it is called a 'future.' Cotton futures, for instance, are dealt in months before the transaction is closed. June deliveries may be sold in January. Where the delivery is to take place at once, that is, on the spot or in the immediate future, we speak of 'spot' cotton or wheat.

"On the stock market most of the deliveries take place on the following day, although, as in New York, the option of delivery is sometimes three, sometimes thirty or sixty days. Apart from the mere gains in daily speculation through 'scalping,' the profits of the stock exchange are realized chiefly through loans. If the 'short,' for instance, is not ready to buy in stocks, when delivery is due, he arranges to borrow them, expecting to liquidate his loan by a future purchase at lower prices. Vice versa, the 'long,' purchaser who is not ready to sell arranges with a broker to 'carry' the stocks for him until such time as he can sell at a profit. The broker protects himself against any possible fall in prices by requiring the customer to put up a margin in cash, which differs with the price fluctuations. In the produce exchange it is the practice to deposit with some constituted authority the margin or sum sufficient to secure the other party

167 from loss in case of failure to fulfill the contract for future delivery. Such transactions are therefore called speculating on a margin. In practice it is impossible to distinguish between margin dealings where there is no delivery and those where actual delivery is made or contemplated, since the difference depends on the shifting intention of the speculator, and since in every contract actual delivery of the stock or produce can legally be called for. Finally, speculation takes the form of privileges. A 'put' is the privilege to put or deliver to the other party at a definite time the security or commodity at a fixed price. A 'call' is the privilege to call or demand from the other party at a definite time the security or commodity at a fixed price. Puts and calls may be bought or sold; when a speculator acquires the right of electing whether to put or call the stock the privilege is called a 'spread' or 'straddle.' Prices of such privileges depend on the nature of the market, the nature of the security, the length of time the privilege has to run and the difference of the stipulated from the present market price."

Extract from the Principles of Economics, with special reference to American conditions, by Edwin R. A. Seligman, LL. D. McVickar, professor of political economy, Columbia University.

SPECULATIVE PROFITS—FUNCTION.

168 "The chief economic function of regular speculation consists in the assumption of risk and results in the equalization of price.

"First, as to the assumption of risk. When, under the stress of modern capitalism, dealing in commodities became national and even international, the perturbations affecting market values grew to be so vast and so numerous that ordinary business was seriously compromised by the violent fluctuations in the price of the raw materials of industry. The manufacturer who bought his materials in the international market expected indeed a profit on the production of the finished article, but was unwilling to have this profit turned into loss by sudden changes in the price of the raw material. It was to secure an escape from the risks of such oscillations that a special class arose which assumed this risk and by concentrated attention derived a profit from the price fluctuations.

"The first way in which risk is minimized for the ordinary business man and assumed by a regular speculative class is through the provision of a continuous open market. A cotton-spinner, for instance, accepts an order for goods to be delivered in a year, and expects to begin spinning in six months. Unless he is able to buy now the cotton to be delivered then, he will be at the mercy of the chance variations in the cotton market, and although he may be the most capable of business men his entire profit may be wiped out by a rise in the price of cotton. The cotton future enables him to eliminate this risk. The same is true of futures in wheat or other

169 commodities. It applies equally to the stock exchange. If a railway or other industry in launching a new enterprise, had to depend on the chance investors at the time of the issue of the securities, it would be seriously hampered. The mere knowledge that at any moment there will be a ready sale on the exchange greatly increases the circle of purchasers, many of whom may not intend to be permanent investors. The stock exchange aids the investment of capital, as the produce exchange aids the production of finished commodities. Business orders and corporate needs are intermittent, because they depend on temporary exigencies; the risks at one end, at all events, are eliminated by the unintermittent, continuous market which regular speculation affords. The cotton exchange was the result of the disorganization of the cotton trade after the Civil War; speculation in all the other staples has in the same way been the consequence of the efforts of the manufacturer to avert the risks of intermittent and spasmodic fluctuations in the raw material.

"A natural and more recent outcome of this attempt to avoid risk is the practice of 'hedging' or 'covering' transactions. An English miller, for instance, needs wheat in February and buys his supply in California, let us say at a price of 90 cents a bushel. By the time the wheat reaches his mill and the flour has been finally disposed of, it may be September, and the price of wheat may have fallen to 75 cents, with a corresponding fall in the price of flour. To protect himself against such a loss the miller sells in February at Chicago for September delivery the same quantity of wheat for the same price as that at which he bought, 90 cents. When September arrives he again enters the Chicago market and makes good his delivery contract by buying the wheat at the market price of 75 cents. His profits in this deal equal his losses in the other, and by this process of 'hedging' contracts he eliminates all risk in price fluctuations due to the raw material. He is content to derive his gains from the profits of his legitimate milling business. Through the use of wheat and cotton futures we thus have the paradoxical result that the business man often resorts to speculation in order to free his business from speculative influences.

"The result of regular speculation, again, is to study prices. If with wheat prices at 80 cents a bushel there is a prospect of a large crop, the intelligent speculator will sell short (a future) say at 70 cents, expecting to buy in at 65 cents. All this selling on the part of the bears, however, tends to reduce present prices and thus to increase consumption, which again tends to keep the future price from falling so low or so suddenly as it would otherwise have done. Vice versa, if a crop shortage is in prospect, prices tend to rise, the commodity becomes a 'good buy' and the bulls are active. The increased purchases tend to raise present prices and to check consumption, while the owners in a rising market hold on for the prospective profit. This combination of a somewhat smaller demand and a larger supply will prevent such a sharp rise in prices as would ordinarily follow a bad crop. Speculation thus tends to equalize demand and supply, and by concentrating in the present the influences of the future it intensifies the normal factors and minimizes the market fluctuation. Speculation hence exerts a directive influence on price. A good example of this is afforded by the gold law during the Civil War. The discount on greenbacks was mistakenly ascribed to the speculation on the gold exchange, and a law was enacted to prohibit all such transactions. As a result, the premium on gold jumped at once from 195 to 285, with wild fluctuations day by day, to be followed, after the hasty repeal of the law fifteen days later, by just as sudden a recession of the price.

"Speculation is hence so perplexing a phenomenon because of its Janus-like aspect. So far as it has become the regular occupation of a class, differentiated from other business men for this particular purpose, it subserves a useful and in modern times an indispensable

function. The expert dealer on the exchanges, who studies and prejudices the market, will in the long run secure profits by reducing risks and studying prices. In this wider sense, speculative profits are earned like other profits. On the other hand, numbers of individuals without experience or ability are constantly taking 'flyers' on the exchanges, and gamble in securities or commodities as they would in cards. Speculation here is as demoralizing to earnest effort and thrift as is the lottery. Moreover, even the professional dealer will often indulge in what we have termed sporadic speculation, and by an extensive manipulation of the market bring about the unsteady of prices usually connected with a 'squeeze' or a 'corner.' Difficult as it is to draw the line in practice, the distinction between economic and uneconomic speculation is faintly recognized in the ordinary attitude toward the bucket-shop as compared to the stock exchange. It will be more clearly appreciated in the future when the exchanges themselves exercise a more rigid scrutiny over the actions of their members, and when business ethics will be lifted to a higher plane of social responsibility. At present speculation has its economic abuses as well as its economic function."

THE ECONOMIC EFFECT OF CONTRACTS FOR FUTURE DELIVERY OF SUGAR.

Prior to the World War the principal exchanges in which sugar was dealt were located in Hamburg, Germany, and in London, England. The quotations there made the prices of the world, and Cuban sugar had to be sold at a price in the United States markets at a level or below the price at which foreign beet sugar could be delivered. Not infrequently Cuban sugars were sold in the United Kingdom markets at less than beets, owing to the needs of Cuban planters for money with which to carry on their crops.

The bulk of the Cuban crop is produced during the months of December to May, inclusive, some estates in the eastern section being able to grind for a longer period as the tropical rainy season does not come at as early a period as it does in the west. This crop is produced before the time when consumption in the United States reaches its greatest, from May to October, inclusive. Even if the Cuban planter were desirous of selling his sugar as made, it would be impossible for him to do so, owing to inability of the consumer to absorb this sugar. Moreover, there must be some supplies in sight to keep prices within reason when consumption is at its height here during the summer. The point that the planter always has in mind, keeping an eye on the future in his desire to remain in business, is to dispose of his crop at a price that will show him a return adequate to encourage him to remain in the business of producing. When quotations on the exchange show him a fair return, his object is to try to take advantage of such prices, and he promptly proceeds to sell. The sugar may or may not be delivered

on the exchange, but the buyer, if so disposed, can demand delivery and get it.

Manipulation of prices of essential commodities, like grain, cotton, sugar, etc., in an attempt to corner the product, as history well shows, always results in disaster to the individual or individuals attempting it. The public will not today stand for unfair manipulation of prices or for attempted monopolistic controls, and when statements are sometimes made that these "controls" are being made in sugar, it is a source of gratification to those having at heart the best interest of the article to know that such is not the case and that a true exposition of the facts will find a fair-minded public ready and willing to listen to the truth.

Let us suppose that trading in sugar futures were prohibited in the country—now really the sugar-trading center of the world—what would happen? Such trading would immediately be transferred to London, Montreal, Havana, or elsewhere, and the income derived by this Government from taxes (stamp and otherwise), would go into the coffers of the countries in which future trading is allowed. There would be no change in the price level—the law of supply and demand would dominate—and the United States would again return to its former position of deferring to foreign markets for the quotation of sugar.

It is a humorous fact that everyone from laborer to farmer and manufacturer wants the price of his particular commodity to be high, but the price of everything else to be low. Economic laws, if left to work in their own infallible way, remedy conditions that man-made laws only bungle. In times of peace, Government interference with business and commerce inevitably ruins the smooth and prosperous progress of the country in which it is done.

In reviewing the situation, it would be well to pause and reflect for a moment on the very great strides that consumption has made in the United States:

	Tons.
1870	563,000
1890	880,000
1890	1,523,000
1900	2,220,000
1910	3,350,000
1920	4,084,000
1922	5,100,000

Other countries had, unquestionably, also made rapid strides in the consumption of sugar, until the World War changed the entire order of things for a while. In fifty years the consumption of the United

States has risen from 563,000 tons in 1870 until 5,100,000 tons were consumed in 1922. A thought as to what the consumption will be in 1930 and 1940, is quite startling, to say the least.

It may be of interest to review a few of the past years in which price changes in sugar were marked, and for this purpose a brief

résumé of the situation during 1904, 1905, 1911, and 1914 are given below:

1904-1905.

January, 1904, opened with the price of Cubas at 2.13c. per pound, cost and freight, and in the same month declined to 1.97c. per pound, from which point it advanced almost without interruption until it reached 3.50c. in December. This advance was caused by the curtailment of the Cuban crop by rains there, and by reduced beet sowings in Europe, which were affected by the heat and drought during the summer.

The year of 1905 opened with Cubas selling at 3.50c. per pound, cost and freight, and the price advanced to 3.88c. per pound. The reverse of the price situation of the previous year developed, and the year closed with Cubas selling at 2.25c. per pound. Restricted consumptive buying and increased beet sowings in Europe precipitated the decline, and again demonstrated the infallibility of the law of supply and demand. Low prices restrict production and encourage consumption, while high prices reduce consumption and increase production. Any interference with this law helps no one and brings disaster to many.

1911.

In 1911 Cubas sold in January as low as 2.06c. per pound, cost and freight, and reached as high as 4.60c. per pound, cost and freight, during September, from which point it declined to 3.29c. 176 per pound, cost and freight, about December 28th. This advance in price was created by the severe drought in Europe, throughout the summer, which severely damaged the beet crop. The high level of prices, however, brought into being the usual remedy of curtailing consumption, thereby reducing prices.

1914.

The year 1914 really marked the beginning of a new era in sugar. Heretofore, the full productions and ready availability of this commodity kept prices at a level altogether incommensurate with the investment and risk that producers, refiners and distributors had to assume when dealing in the article. The retailers, as a rule, handed sugar to the consumers at a price that rarely showed any profit, and sugar was not infrequently put on sale as a leader to the distribution of other more profitable commodities of not so essential importance to the use, comfort and welfare of the people, as sugar.

With the outbreak of hostilities in Europe, the public began to realize what a great part of their essentials and luxuries were associated with the use of sugar. The feeling that this article of

such ready availability and extreme cheapness might not be hereafter so readily available, began to sink into the minds of the public, and sugar for the first time in many years emerged from its position of unattractiveness and assumed the position to which it was entitled as a basic commodity.

From January 1st up to July 31st, the cost and freight price of Cubas advances were from 1.88 cents per pound up to 2.28 cents per pound, but fear of the immediate destruction of the beet fields of Europe caused the price to advance till 5.50 cents per pound, cost and freight, on August 13th was paid by refiners. This advance could not be maintained, however, and quotations reacted with some fluctuations, until 2.44 cents per pound, cost and freight, was reached on November 2nd. The full realization, however, that the continuance of the war must inevitably reduce the beet exports of Europe, brought about a rally in prices and the year closed with Cubas selling at 3 cents per pound, cost and freight.

The war has, apparently, demonstrated the value of sugar as a foodstuff—notwithstanding the efforts of some pseudo-scientist to class it entirely as a luxury. Armies were given an abundance of it as well as other sweets, for the food value and energy which it imparts to the human system. Germany today in its impoverished position, practically consumes the same quantity of sugar that it did before the war. Surely if sugar was such a luxury the 1,500,000 tons which it produces and consumes would find its way into other markets, where its gold value would easily be, say \$100,000,000, at the low price of 3 cents per pound. Germany, however, will not part with its sugar, fully realizing how essential it is to the needs of its people.

Sugar prices: The following quotations from Willett & Gray show that the percentage of differences between the highs and lows of cost and freight Cubas, were just as varying before the opening of the exchange as they have been since. Over a long range, prices are regulated by natural laws and not by the machinations of man. The value of sugar is so great that any attempt to exert monopolistic control would find such fool-hardy dreamers without the financial means of accomplishing it.

Time does not serve to enable us to make a comparative statement of the prices ruling in the United States and foreign countries, but an examination of this by those sufficiently interested in the article will convince them that aside from justification of such levels based on the statistical situation, that the prices ruling in foreign countries are quite generally above those ruling in the United States.

Willet & Gray.

Year.	High.	Low.	Average.	% increase between high & low.	
1905.....	3.875	2.06	2.918	68	
1906.....	2.73	2.00	2.316	36	
1907.....	2.59	2.03	2.396	27	
1908.....	3.125	2.31	2.713	35	
1909.....	3.09	2.25	2.646	37	
1910.....	3.09	2.44	2.828	27	
1911.....	4.60	2.06	3.090	123	
1912.....	3.44	2.41	2.804	43	
1913.....	2.44	1.875	2.15	30	
1914.....	5.50	1.875	2.745	194	
1915.....	4.19	2.625	3.626	60	Exchange began functioning
1916.....	5.625	3.50	4.767	60	
1917.....	6.50	3.8125	5.208	70	
1918.....	5.88	4.985	5.014	.....	Cuba crops sold to U. S.
1919.....	12.50	5.88	6.354	.....	" " " " " "
1920.....	22.50	3.625	11.337	520	Inflation and deflation.
1921.....	5.25	1.813	3.459	.....	Cuban Govt. control of crop
1922.....	4.00	1.813	2.977	121	

Before closing, another reference to the consumption would seem to be fitting. For this purpose, the figures of Willett & Gray are again used. From 1914 to 1922 the world's production of sugar decreased from 18,436,478 tons to 17,650,662 tons, while the consumption in the United States has increased from 3,760,827 tons in 1914 till 5,092,758 tons was consumed in 1922:

	World's production.		U. S. consumption.
	Tons.		Tons.
1913-14.....	18,436,478	1914.....	3,760,827
1914-15.....	18,483,432	1915.....	3,801,531
1915-16.....	16,879,538	1916.....	3,658,607
1916-17.....	17,105,552	1917.....	3,683,599
1917-18.....	17,421,680	1918.....	3,495,606
1918-19.....	15,834,880	1919.....	4,067,671
1919-20.....	15,200,400	1920.....	4,084,672
1920-21.....	16,767,311	1921.....	4,107,328
1921-22.....	17,650,662	1922.....	5,092,758
1922-23.....	18,046,396	1923.....	(?)
1913-14.....	18,436,478	1914.....	3,760,827
1921-22.....	17,650,662	1922.....	5,092,758
Decrease.....	785,816—4.2%	Inc.....	1,331,931—35.4%

180 In the District Court of the United States, for the Southern District of New York.

[Title omitted.]

Affidavit of E. W. Stetson.

STATE OF NEW YORK,
County of New York, ss:

E. W. STETSON, being duly sworn, deposes and says:

I am a vice-president of the Guaranty Trust Company of New York. My bank from time to time makes loans to producers, dealers, and importers of sugar that has been sold either to refiners or to other consumers. We are always willing to loan to a greater extent against sugar so purchased or owned by the borrower, if any loss due to a decrease in the value of the sugar is protected by a hedge on the sugar exchange, because such a hedge protects us from the possible speculative loss arising from a marked fluctuation in price.

We, therefore, regard the opportunities which the sugar exchange gives for the making of future contracts as a valuable economic function and of great importance in connection with the normal trade in sugar. Such contracts for future delivery in our opinion, have the effect of stabilizing the market and preventing, to some extent, sudden fluctuations.

E. W. STETSON.

Subscribed and sworn to before me this 5th day of May, 1923.

[N. S.]

JOHN M. MURPHY,
Notary Public, &c.

182 In the District Court of the United States for the Southern District of New York.

[Title omitted.]

Affidavit of F. J. Leary.

STATE OF NEW YORK,
County of New York, ss:

F. J. LEARY, being duly sworn, deposes and says:

I am the vice president of the Central Union Trust Company. Our company makes loans to producers, dealers, or importers of sugar that has been sold or is to be sold to refiners or to other consumers. We are always willing to loan to a greater extent against sugar purchased or owned by the borrower if any loss due to a decrease in the value of the sugar is protected by a hedge on the sugar exchange, because such a hedge protects us from the possible loss arising from a marked fluctuation in price. We therefore regard the opportunities which the sugar exchange gives for the making of future contracts as a valuable economic function and of great importance in connection with the normal trade

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in sugar. Such contracts for future delivery, in our opinion, have the effect of stabilizing the market and tending to prevent sudden fluctuations.

F. J. LEAHY.

Subscribed and sworn to before me this 7 day of May, 1923.

[NOTARIAL SEAL.]

M. J. CULLEN,

Notary Public.

Bronx County No. 65.

Bronx County register's No. 142.

Certificate filed in New York County No. 310.

New York County register's No. 4278.

184 In the District Court of the United States for the Southern District of New York.

[Title omitted.]

Affidavit of Albert Strauss.

STATE OF NEW YORK,

County of New York, ss:

ALBERT STRAUSS, being duly sworn, says:

I am the chairman of the board of directors of the Cuba Cane Sugar Corporation, which is one of the largest single producers of raw sugar in the island of Cuba, producing upwards of 400,000 tons of raw sugar per annum, or about one-eighth of the crop of the island.

We find the opportunities afforded by the New York Coffee and Sugar Exchange for making contracts for the sale of futures advantageous and useful in our business by permitting us to limit our risks on the fluctuations of the market. The principal element in the cost of raw sugars is the cost of cane. Cane is paid for in a fixed amount of raw sugar in proportion to the weight of
185 cane furnished by the grower. The settlement is made either in the delivery of raw sugar, or, in most cases, by payment for the raw sugar at prices fixed every two weeks by the Association of Sugar Brokers in Havana, which prices are based on the average sugar prices of the preceding two weeks. The corporation, during its grinding season, thus becomes the purchaser daily from its growers, of a certain proportion of the sugar produced; and in order not to speculate in the sugar thus produced daily, is under the necessity of selling sugar every few days in order that its sales may conform to the average price of the market, which is the price at which the corporation must make settlement by weekly intervals, as above explained. When there is no demand either from abroad or from refiners for raw sugars, the corporation is forced to go long of sugar and take the changes of the market, unless on such occasions it hedges its purchases through sales on the sugar exchange. In this way the corporation has found the sugar exchange helpful

in permitting it to avoid speculative risks on sugars thus daily taken over from its growers.

ALBERT W. STRAUSS.

Subscribed and sworn to before me this 7th day of May, 1923.

[NOTARIAL SEAL.]

HERBERT J. GROGAN,
Notary Public.

186 In the District Court of the United States for the Southern District of New York.

[Title omitted.]

Affidavit of Roy M. Bell.

STATE OF NEW YORK,
County of New York, ss:

ROY M. BELL, being duly sworn, deposes and says: That he is the treasurer of the Warner Sugar Refining Company, which refines approximately eleven per cent (11%) of the sugar refined in the United States, and that he is familiar with the purchase of raw sugars and the sale of refined sugars by said company.

That the warehouses owned by the company are licensed by the sugar exchange as warehouses for sugar.

That the company aims to keep its refinery in continuous operation throughout the year, and is required to purchase large quantities of raw sugars to be delivered to it at future periods in order to assure itself an adequate supply of raw material at the refinery and to cover its commitments from time to time for actual sale and
187 delivery of refined sugar to its customers and prepare to meet the anticipated growth of its business.

The company has found the New York Coffee and Sugar Exchange a useful medium for making contracts for future deliveries, which enables the company to maintain a constant refiner's margin and protect itself against fluctuations in prices of sugars.

The operations of the exchange ordinarily enable us to figure on a fair refining margin which can be assured to us by buying or selling on the exchange as required by our needs for raws or sales of refined.

ROY M. BELL.

Subscribed and sworn to before me this 7th day of May, 1923.

[N. S.]

JOSEPH J. MILLS,
Notary Public.

188 In the District Court of the United States for the Southern District of New York.

[Title omitted.]

Affidavit of W. S. Pardonner.

STATE OF GEORGIA,
County of Chatham, ss:

W. S. PARDONNER, being duly sworn, deposes and says:

I am the vice president and secretary treasurer of the Savannah Sugar Refining Corporation, which owns a sugar refinery at Savan-

nah, Georgia, and refines annually about four per cent (4%) of the sugar refined at the Atlantic coast refineries. The said corporation does not purchase any of its refined or raw sugar on the New York Coffee and Sugar Exchange, Inc., but it has frequently protected itself against fluctuations in the value of its sugar by selling contracts for future delivery on said exchange, and such hedging is an important protection to its business against fluctuations in price. I regard the opportunity for making future contracts afforded by said exchange as of great importance in saving the refinery from losses due to fluctuations in market, and enabling it to make its legitimate manufacturer's profit without the speculative risks which would be involved if such hedging were not possible, and its quotations for futures as of great value in showing the trend of the world's opinion as to the probable course of prices.

W. S. PARDONNER.

Subscribed and sworn to before me this 3rd day of May, 1923.

[NOTARIAL SEAL.]

JOSE LOWENSTEIN,

Notary Public, Chatham County, Ga.

My commission expires June 27, 1925.

County clerk's certificate annexed.

190 *To whom it may concern:*

The Imperial Sugar Company owns and operates the sugar refinery at Sugarland, Texas; is not in any way interested in raw sugar production, and it purchases or acquires its raw sugars principally from Cuba and Porto Rico.

We are not members of the New York Coffee and Sugar Exchange, but have used the exchange in a limited way to hedge purchases of raw sugars in Cuba until same could be refined and sold, and/or to purchase raw sugar contracts against refined, sold for future delivery. We consider the New York Coffee and Sugar Exchange a benefit to the sugar industry, and we believe to consumers as well, as at times operators on the sugar exchange have been willing to sell raw sugar contracts at cheaper prices than raw sugar producers, and therefore enabled us to acquire contracts against which we could offer cheaper to the trade than if we were compelled to take speculative risks.

SUGARLAND INDUSTRIES,

By I. H. KEMPNER,

President.

THE STATE OF TEXAS,

County of Galveston, ss:

Before me, a notary public in and for Galveston County, Texas, on this day personally appeared I. H. Kempner, known to me, and who on oath deposes and says that the foregoing statement is true to the best of his knowledge and belief.

[NOTARIAL SEAL.]

M. H. LOWREY,

Notary Public in and for Galveston County, Texas.

191 Attorney General's certificate of public importance (filed April 23, 1923).

In the District Court of the United States for the Southern District of New York.

[Title omitted.]

TO THE CLERK OF SAID COURT:

I hereby certify that the above entitled cause now pending in said court is a suit in equity brought by the United States against the New York Coffee and Sugar Exchange (Inc.), the New York Coffee and Sugar Clearing Association (Inc.), and other defendants named therein, under the act of Congress entitled "An act to protect trade and commerce against unlawful restraints and monopolies," approved July 2, 1890 (26 Stat. 209) and that said suit is in my opinion a case of general public importance.

I therefore request that, complying with the provisions of the act of Congress entitled "An act to expedite the hearing and determination of suits in equity pending or hereafter brought under the act of July 2, 1890, entitled 'An act to protect trade and commerce against unlawful restraints and monopolies,' approved February 11, 1903 (32 Stat. 823), as amended by the act of Congress approved June 25, 1910 (36 Stat. 854), you will file this certificate among the records of the above entitled cause, and immediately furnish a copy thereof to each of the circuit judges of the Second Circuit, 192 to the end that said case shall be given precedence over others and in every way expedited, and be assigned for hearing at the earliest practicable day before not less than three of the circuit judges of said circuit, as provided in said act of February 11, 1903, as amended.

(Signed) AUGUSTUS T. SEYMOUR,
Acting Attorney General.

WASHINGTON, D. C., April 23, 1923.

193 Affidavits and exhibits on behalf of the United States, filed and received in evidence in open court, April 30, 1923.

District Court of the United States, Southern District of New York.

[Title omitted.]

Affidavit of P. J. Smith.

COUNTY OF NEW YORK,
State of New York, ss:

PIERRE J. SMITH, being duly sworn, deposes and says:

That he is president of the Federal Sugar Refining Co., a corporation having its principal office at 91 Wall Street, New York, and plants for the manufacture of refined sugar at Yonkers, N. Y.

That said corporation refines approximately seven per cent (7%) of the total quantity of sugar annually consumed in the United States.

That approximately fifty per cent (50%) of the refined sugar annually consumed in the United States is manufactured from raw sugar produced in Cuba.

That said corporation purchases its annual requirements of raw sugar from raw sugar brokers in the United States acting as agents for producers, owners, or brokers of raw sugar in Cuba and elsewhere.

That neither said corporation nor any of its officers and directors is a member of the New York Coffee and Sugar Exchange (Inc.), and the New York Coffee and Sugar Clearing Association (Inc.).

That said corporation has never purchased any of its requirements of raw sugar on said New York Coffee and Sugar Exchange
194 (Inc.); and engaged in only one transaction on the said exchange several years ago.

That during the current calendar year said corporation has been able to purchase all the raw sugar required in the conduct of its business, provided it paid the price demanded.

That the prices paid by said corporation for raw sugar ranged from 3½ cents per pound on February 1, 1923, to 6½ cents per pound on April 19, 1923, basis cost and freight for 96" Cuban centrifs.

That the prices which said corporation has been compelled to pay for raw sugar required in the conduct of its business are strongly influenced, and at times seemingly controlled by the prices established as a result of transactions in "futures" taking place from day to day on the floor of the New York Coffee and Sugar Exchange (Inc.).

That the rapidly advancing price of raw sugar since February 1, 1923, has necessitated correspondingly rapid increases in the price of refined sugar.

That the rapid advance in the price demanded for raw sugar has caused said corporation to carry in stock, or under contract of purchase, a substantially less quantity of raw sugar with which to meet its anticipated requirements than said corporation otherwise would carry in stock or under contract of purchase at this particular season of the year.

That large quantities of raw sugar produced in Cuba are shipped to refineries situated at various ports along the seaboard of the United States and there converted into refined sugar.

That refined sugar is marketed through wholesale and retail grocers and others to consumers and large quantities are sold to manufacturers and other users throughout the United States.

That sugar, both raw and refined, normally moves in large
195 quantities in both the foreign and interstate commerce of the United States.

That our advices show that the available supply of refined sugar at present in the United States is ample to meet the current requirements of the people of the United States.

That no one can foretell the final outturn of the sugar crops in the Tropics, or the amount of sugar which will be consumed in the United States this year, and all attempts to do so are largely speculative.

This affidavit is intended for use on behalf of the United States in the above-entitled cause.

All interlineations made, blank spaces filled in, and words crossed out in the presence of and at the request of the deponent.

(Sgd.) PIERRE J. SMITH.

Subscribed and sworn to before me this 30th day of April, 1923.

[SEAL.]

JERE F. MCCARTHY,
Notary Public.

Kings County clerk's No. 89.

Certificate filed in N. Y. County No. 11.

Comm. expires March 30, 1925.

196 District Court of the United States, Southern District of New York.

[Title omitted.]

Affidavit of W. A. Jamison.

COUNTY OF NEW YORK,

State of New York, ss:

WM. A. JAMISON, being duly sworn, deposes and says:

That he is a member of Arbuckle Brothers, a copartnership having its principal office at 71 Water Street, New York City, and a plant for the manufacture of refined sugar at Brooklyn, N. Y.

That said firm refines approximately seven per cent of the total quantity of cane sugar annually refined in the United States.

That approximately fifty per cent (50%) of the refined sugar annually consumed in the United States is manufactured from raw sugar produced in Cuba.

That said firm purchases its annual requirements of raw sugar from owners and raw sugar brokers in the United States acting as agents for producers, owners or brokers of raw sugar in Cuba and elsewhere.

That deponent is a member of the New York Coffee and Sugar Exchange (Inc.), but has never purchased any of its requirements of raw sugar on said exchange.

That during the current calendar year said firm has been 197 able to purchase all the raw sugar required in the conduct of its business, provided it paid the price demanded.

That the prices (c. & f. New York) paid by said firm for raw sugar ranged from 34¢ per pound on February 2, 1923, to 64¢ per pound on April 18, 1923.

That the prices which said firm has been compelled to pay for raw sugar required in the conduct of its business are strongly influenced and at times seemingly controlled, by the prices established as a result of transactions in "futures" taking place from day to day on the floor of the New York Coffee and Sugar Exchange (Inc.).

That the rapidly advancing price of raw sugar since February 1, 1923, has necessitated correspondingly rapid increases in the price of refined sugar.

That the rapid advance in the price demanded for raw sugar has caused said firm to carry in stock, or under contract of purchase, a substantially less quantity of raw sugar with which to meet its anticipated requirements than said firm otherwise would carry in stock, or under contract of purchase, at this particular season of the year.

That large quantities of raw sugar produced in Cuba are shipped to refineries situated at various ports along the seaboard of the United States, and there converted into refined sugar.

That refined sugar is marketed through wholesale and retail grocers and others to consumers and large quantities are sold to manufacturers and other users throughout the United States.

That sugar, both raw and refined, normally moves in large quantities in both the foreign and interstate commerce of the United States.

198 That our advices show that the available supply of refined sugar at present in the United States is ample to meet the current requirements of the people of the United States.

That no one can foretell the final outturn of the sugar crops in the Tropics or the amount of sugar which will be consumed in the United States this year, and all attempts to do so are largely speculative.

This affidavit is intended for use on behalf of the United States in the above-entitled cause.

All interlineations made, blank spaces filled in and words crossed out in the presence of and at the request of the deponent.

(Signed) WM. A. JAMISON.

Subscribed and sworn to before me this 28th day of April, 1923.

[SEAL.]

WM. L. HAMMEN,
Notary Public.

199 District Court of the United States, Southern District of New York.

[Title omitted.]

Affidavit of Earl D. Babst.

COUNTY OF NEW YORK,
State of New York, ss:

EARL D. BABST, being duly sworn, deposes and says:

That he is president of the American Sugar Refining Company, a corporation having its principal office at 117 Wall Street, New York City, and refineries at Boston, Mass.; Brooklyn, N. Y.; Baltimore,

Md.; and New Orleans, La.; and which is the owner of the entire capital stock of the Franklin Sugar Refining Company, which has a refinery at Philadelphia, Pa.

That said corporation, with the Franklin Sugar Refining Company, refines approximately twenty-five per cent (25%) of the total quantity of sugar annually consumed in the United States.

That approximately fifty per cent (50%) of the refined sugar annually consumed in the United States is refined from raw sugar produced in Cuba.

That Central Cunagua, a Cuban corporation, of which the American Sugar Refining Company is the owner of the entire capital stock, produces in Cuba about ten per cent (10%) of the annual requirements of raw sugar of said corporation, and said corporation purchases the balance, or ninety per cent of its annual requirements from raw sugar brokers in the United States acting as agents for producers, owners, or brokers of raw sugar, in Cuba and elsewhere.

That during the calendar year 1922 said corporation, including the Franklin Sugar Refining Company, melted 1,649,353 tons of raw sugar.

That neither said corporation nor any of its officers and directors is a member of the New York Coffee and Sugar Exchange (Inc.), and the New York Coffee and Sugar Clearing Association (Inc.).

That said corporation has never purchased any of its requirements of raw sugar on said New York Coffee and Sugar Exchange (Inc.).

That during the current calendar year said corporation has been able to purchase all the raw sugar required in the conduct of its business, provided it paid the price demanded.

That the prices paid by said corporation for raw sugar, 96°, ranged from 3½ cents per pound, c. & f., or 5.39 cents per pound, duty paid, on February 1, 1923, to 6¼ cents per pound, c. & f., or 8.13 cents per pound, duty paid, on April 19, 1923.

That the prices which said corporation has been compelled to pay for the raw sugar required in the conduct of its business are strongly influenced by the prices established as the result of transactions taking place from day to day on the floor of the New York Coffee and Sugar Exchange (Inc.).

That the rapidly advancing price of raw sugar since February 1, 1923, has necessitated correspondingly rapid increases in the price of refined sugar.

That the rapid advance in the price demand for raw sugar has caused said corporation to carry in stock, or under contract of purchase, a substantially less quantity of raw sugar with which to meet its anticipated requirements than said corporation would have felt justified in carrying had the advance in the price of raw sugar been gradual.

That large quantities of raw sugar produced in Cuba are shipped to refineries situated at various ports along the seaboard of the United States and there converted into refined sugar.

That refined sugar is marketed through wholesale and retail grocers, and others, to consumers, and large quantities are sold to manufacturers and other users throughout the United States.

That raw sugar normally moves in large quantities in the foreign commerce of the United States, and refined sugar moves in large quantities in both the foreign and interstate commerce of the United States.

That our advices show that the available supply of refined sugar at present in the United States is ample to meet the current requirements of the people of the United States.

That no one can foretell the final outturn of the sugar crops in the Tropics, or the amount of sugar which will be consumed in the United States this year, and all attempts to do so are largely speculative.

This affidavit is intended for use on behalf of the United States in the above-entitled cause.

EARL D. BARST.

Subscribed and sworn to before me this 30th day of April, 1923.

[SEAL.]

M. E. BURLEW,

Notary Public, Kings Co., No. 148.

Kings register No. 4135.

Certificate filed in N. Y. Co., No. 278.

New York registered No. 4298.

202 District Court of the United States, Southern District of New York.

[Title omitted.]

Affidavit of F. C. Lowry.

COUNTY OF NEW YORK,

State of New York, ss:

FRANK C. LOWRY, being duly sworn, deposes and says:

That he is a member of the firm of R. Atkins & Company, a co-partnership doing business at 111 Wall Street, New York City, who have refined sugar manufactured at the Pennsylvania Sugar Company, Philadelphia, Pennsylvania.

That said refinery refines approximately eight (8) per cent of the total quantity of sugar annually consumed in the United States.

That approximately fifty per cent (50%) of the refined sugar annually consumed in the United States is manufactured from raw sugar produced in Cuba.

That said copartnership purchases its annual requirements of raw sugar direct from planters and through raw-sugar brokers in the United States acting as agents for producers, owners, or brokers of raw sugar in Cuba and elsewhere.

That neither of the partners of said copartnership is a member of the New York Coffee and Sugar Exchange (Inc.) and the New York Coffee and Sugar Clearing Association (Inc.).

That said copartnership has never purchased any of its requirements of raw sugar on said New York Coffee and Sugar Exchange (Inc.).

That during the current calendar year said copartnership 203 has been able to purchase all the raw sugar required in the conduct of its business, provided it paid the price demanded.

That the prices paid by said copartnership for raw sugar ranged from 3½ cents per pound in January, 1923, to 6 cents per pound on April 19, 1923.

That the prices which said copartnership has been compelled to pay for raw sugar required in the conduct of its business, while based on the law of supply and demand, are strongly influenced, and at times seemingly controlled, by the prices established as a result of transactions in "futures" taking place from day to day on the floor of the New York Coffee and Sugar Exchange (Inc.).

That the rapidly advancing price of raw sugar since February 1, 1923, has necessitated correspondingly rapid increases in the price of refined sugar.

That large quantities of raw sugar produced in Cuba are shipped to refineries situated at various ports along the seaboard of the United States, and there converted into refined sugar.

That refined sugar is marketed through wholesale and retail grocers and others to consumers, and large quantities are sold to manufacturers and other users throughout the United States.

That sugar, both raw and refined, normally moves in large quantities in both the foreign and interstate commerce of the United States.

That our advices show that the available supply of refined sugar at present in the United States is ample to meet the current requirements of the people of the United States.

That no one can foretell the final outturn of the sugar crops in the tropics, or the amount of sugar which will be consumed in the United States this year, and all attempts to do so are largely matters of individual opinion.

204 All interlineations made, blank spaces filled in and words crossed out in the presence of and at the request of deponent.
(Sgd.) FRANK C. LOWRY.

Subscribed and sworn to before me this 30th day of April, 1923.

[REAL] EDITH F. VYNER,
Notary Public, New York County.

New York County clerk's No. 52.

New York registers No. 4013.

Certificate filed in Kings County.

Clerk's No. 24; register's No. 4017.

Commission expires March 30th, 1924.

205 District Court of the United States, Southern District of
New York.

[Title omitted.]

Affidavit of James H. Post.

COUNTY OF NEW YORK,
State of New York, ss:

JAMES H. POST, being duly sworn, deposes and says that he is president of the National Sugar Refining Co. of New Jersey, a corporation having its principal office at No. 129 Front Street, New York City, and plants for the manufacture of refined sugar at Long Island City and Yonkers, N. Y.

That said corporation refines approximately 11.4 per cent of the total quantity of sugar annually consumed in the United States.

That approximately 50 per cent (50%) of the refined sugar annually consumed in the United States is manufactured from raw sugar produced in Cuba.

That said corporation purchases its annual requirements of raw sugar from raw sugar brokers in the United States acting as agents for producers, owners, or brokers of raw sugar in Cuba and elsewhere.

That neither said corporation nor any of its officers is a member of the New York Coffee and Sugar Exchange (Inc.) and the New York Coffee and Sugar Clearing Association (Inc.).

206 That said corporation has never purchased any of its requirements of raw sugar on said New York Coffee and Sugar Exchange (Inc.).

That during the current calendar year said corporation has been able to purchase all the raw sugar required in the conduct of its business, provided it paid the price demanded.

That the prices paid by said corporation for raw sugar ranged from 5.28 cents per pound on February 1, 1923, to 8.03 cents per pound on April 19, 1923.

The above prices are duty paid and are equivalent to 3.50 and 6.25 c. and f., respectively.

That the prices which said corporation has been compelled to pay for raw sugar required in the conduct of its business are strongly influenced, and at times seemingly controlled, by the prices established as a result of transactions in "futures" taking place from day to day on the floor of the New York Coffee and Sugar Exchange (Inc.).

That the rapidly advancing price of raw sugar since February 1, 1923, has necessitated correspondingly rapid increases in the price of refined sugar.

That the rapid advance in the price demanded for raw sugar has caused said corporation to carry in stock, or under contract of pur-

chase, a somewhat less quantity of raw sugar with which to meet its anticipated requirements than said corporation otherwise would carry in stock, or under contract of purchase, at this particular season of the year.

207 That large quantities of raw sugar produced in Cuba are shipped to refineries situated at various ports along the seaboard of the United States and there converted into refined sugar.

That refined sugar is marketed through wholesale and retail grocers and others to consumers and large quantities are sold to manufacturers and other users throughout the United States.

That sugar, both raw and refined, normally moves in large quantities in both the foreign and interstate commerce of the United States.

That our advices show that the available supply of refined sugar at present in the United States is ample to meet the current requirements of the people of the United States.

That no one can foretell the final outturn of the sugar crops in the Tropics or the amount of sugar which will be consumed in the United States this year, and all attempts to do so are largely speculative.

This affidavit is intended for use on behalf of the United States in the above entitled cause.

All interlineations made, blank spaces filled in, and words crossed out in the presence of and at the request of the deponent.

JAMES H. POST.

Subscribed and sworn to before me this 30th day of April, 1923.

[SEAL.]

WILLIAM C. T. GRIES,

Notary Public, Nassau County.

Certificate filed in New York Co. 68; reg. No. 4093.

Commission expires March 30, 1924.

208 In the District Court of the United States for the Southern District of New York.

[Title omitted.]

Affidavit of Frederick Hayward, jr.

STATE OF NEW YORK,

County of New York, ss:

FREDERICK HAYWARD, Jr., being duly sworn, deposes and states upon knowledge, information, and belief:

That he is acting deputy collector of customs for the port of New York, and that based upon reports received from Government officials in charge of books of original entry the following facts appear with reference to the storage of raw sugar in customs' bonded warehouses in and about New York City:

That as of the date of April 1, 1923, there was in such storage 125,448 bags of raw sugar, and that of this total amount the following-named concerns, who appear upon a list of the membership of

the New York Coffee & Sugar Exchange (Inc.), are the importers record of the amounts herein set opposite their respective names:

J. Aron & Co.	-----	By
H. H. Pike & Co.	-----	2.
Minford, Leuder & Co.	-----	1.
		112,

209 Deponent further states that based upon said records that on April 2, 1923, G. H. Finlay & Co., likewise appearing on the list of members of said exchange, imported into the United States the port of New York 8,996 bags of raw sugar.

This affidavit is for use in the above-styled cause in behalf of the United States.

All interlineations and filling in of blank spaces are in the handwriting of the deponent.

FRED'K HAYWARD, Jr.

Subscribed in my presence and sworn to before me this 30th day of April, 1923, in the city of New York, in the Southern District of New York.

[SEAL.]

ANNA FAIANS,
Notary Public, N. Y. Co.

210 District Court of the United States, Southern District of New York.

[Title omitted.]

Affidavit of J. R. Haas.

COUNTY OF NEW YORK,
State of New York, ss:

JACQUES R. HAAS, being duly sworn, deposes and says:

That he is vice president of Loft, Incorporated, a corporation engaged in the manufacture and sale of candy, with its principal office and place of business in the city of New York.

That he is familiar with the business of said corporation, particularly in so far as it relates to the purchase of refined sugar for use in the manufacture of candy.

That said corporation purchases considerable quantities of refined sugar, which are used in the manufacture of candy, which is sold at wholesale and retail to numerous customers in various States.

That said corporation purchases annually approximately 10,000 barrels of refined sugar for use in the manufacture of candy.

That said purchases of refined sugar are made principally from various large refineries.

2 That the prices paid by said corporation for refined sugar ranged from .0670 cents per pound on February 1, 1923, to .0 cents per pound on April 19, 1923.

Deponent can not say whether there is any apparent shortage in the supply of refined sugar, but that said corporation has experienced no difficulty in purchasing all the refined sugar required in the conduct of its business, provided it paid the price demanded.

That the material advance in the price in which said corporation has been compelled to pay for refined sugar required in the manufacture of candy has necessitated and may further necessitate an increase in the prices which it must ask the public to pay for said candy, and that as a result thereof there has been, or in all probability there will be, a substantial reduction in the demand of the public for said candy and a reduction in the volume of sales of candy by said corporation.

That approx. 26% per cent of the candy manufactured by said corporation is sold and shipped in interstate commerce, and any reduction in the quantity of candy so manufactured and sold by said corporation, due to the increased price thereof made necessary by the high price of refined sugar, reduces the volume of candy sold and shipped in interstate commerce.

This affidavit is intended for use on behalf of the United States in the above-entitled cause.

¶ All interlineations made, blank spaces filled in, and words crossed out in the presence of and at the request of the deponent.

(Sgd.)

JACQUES R. HAAS,

Subscribed and sworn to before me this 30th day of April, 1923.

[SEAL.]

J. A. MULHALL,

Notary Public, N. Y. C.

212 District Court of the United States, Southern District of New York.

[Title omitted.]

Affidavit of J. A. Badenoch.

COUNTY OF NEW YORK,

State of New York, ss:

JOHN A. BADENOCH, being duly sworn, deposes and says:

That he is vice president of Park & Tilford, a corporation engaged in the manufacture and sale of candy, and also engaged in the general grocery business, with its principal office and place of business in the city of New York.

That he is familiar with the business of said corporation, particularly in so far as it relates to the purchase of refined sugar for use in the manufacture of candy, and for sale generally.

That said corporation purchases considerable quantities of
213 refined sugar, some of which is used in the manufacture of candy, and some of which is sold at retail to its various customers in New York, New Jersey, Connecticut, and other States.

That said corporation purchases annually approximately 10,000 barrels of refined sugar for use in the manufacture of candy.

That said corporation purchases, sells, and distributes approximately 8,000 barrels of refined sugar per annum.

That all of said purchases are made principally from American Sugar Refining Company.

That the prices paid by said corporation for refined sugar ranged from 6½ cents per pound on February 1, 1923, to 9 cents per pound on April 19, 1923.

That there is no apparent shortage in the supply of refined sugar, and that said corporation has experienced no difficulty in purchasing all the refined sugar required in the conduct of its business, provided it paid the price demanded.

That the material advanced in the price which said corporation has been compelled to pay for refined sugar required in the manufacture of candy will necessitate an increase in the prices which it must ask the public to pay for said candy, and that as a result thereof there in all probability will be a substantial reduction in the demand of the public for said candy and a reduction in the volume of sales of candy by said corporation.

That the substantial increase in the price of refined sugar purchased by said corporation has necessitated a corresponding increase in the price charged its customers for the same, and as a result thereof there in all probability will be a substantial reduction both in the quantity of refined sugar purchased by said corporation and a possible reduction in the volume of sales made by said corporation.

That refined sugar purchased, sold, and distributed by said corporation indirectly in a manufactured form as candy enters largely into interstate commerce, and that any reduction in the quantity of refined sugar bought, sold, and used by said corporation reduces the quantity of refined sugar flowing in interstate commerce.

215 This affidavit is intended for use on behalf of the United State in the above entitled cause.

All interlineations made, blank spaces filled in, and words crossed out in the presence of and at the request of the deponent.

JOHN A. BADENCOH.

Subscribed and sworn to before me this 27th day of April, 1923.

[SEAL.]

T. W. MILLER,

Notary Public, Westchester County.

Certificate filed in New York County.

Clerk's No. 87; register's No. 5188.

Commission expires March 30th, 1924.

216 District Court of the United States Southern District of New York.

[Title omitted.]

Affidavit of A. G. Hoffman.

COUNTY OF HUDSON,

State of New Jersey, ss:

ARTHUR G. HOFFMAN, being duly sworn, deposes and says:

That he is vice president of the Great Atlantic & Pacific Tea Company, a corporation engaged in the business of chain stores,

and having its principal place of business at Jersey City and 7,500 branches in 2,187 cities in 30 States.

That he is familiar with the business of said corporation particularly in so far as it relates to the purchase and sale of refined sugar.

That said corporation purchases considerable quantities of refined sugar, which are sold and distributed by its 7,500 branches in 2,187 cities in 30 States.

217 That his corporation purchases and sells and distributes approximately 1,000,000 barrels of refined sugar per annum, said purchases being made principally from all refiners.

That the prices paid by said corporation for refined sugar ranged from 6.80 cents per pound on February 1, 1923, to 9.60 cents per pound on April 19, 1923.

That there is no apparent shortage in the supply of refined sugar, and that said corporation has experienced no difficulty in purchasing all the refined sugar required in the conduct of its business, provided it paid the price demanded.

That due to the exorbitant and materially enhanced prices which said corporation has been compelled to pay for refined sugar required to meet the demands of its trade, it has become necessary to increase the prices in sales made to its customers.

That the substantial increase in the price of refined sugar purchased by said corporation has necessitated and will necessitate a corresponding increase in the price charged its customers for the same, and as a result thereof there has been, and in all probability there will be, a substantial reduction both in the quantity of
218 refined sugar purchased by said corporation and a reduction in the volume of sales made by said corporation.

That refined sugar purchased, sold, and distributed by said corporation enters largely into interstate commerce, and that any reduction in the quantity of refined sugar bought and sold by said corporation reduces the quantity of refined sugar flowing in interstate commerce.

This affidavit is intended for use on behalf of the United States in the above-entitled cause.

All interlineations made, blank spaces filled in, and words crossed out in the presence of and at the request of the deponent.

(Sgd.) ARTHUR G. HOFFMAN.

Subscribed and sworn to before me this 25th day of April, 1923.

[SEAL]

(Sgd.) WILLIAM CORKILL,
Notary Public, New Jersey.

[Title omitted.]

Affidavit of E. C. Hultman.

COUNTY OF NEW YORK,

State of New York, ss:

EUGENE C. HULTMAN, being duly sworn, deposes and says:

I am chairman of the Special Commission on the Necessaries of Life of the Commonwealth of Massachusetts, appointed by former Governor Coolidge in 1920 and reappointed in 1921 by Governor Cox, pursuant to an act passed by the legislature in 1919, creating a commission to assist during the reconstruction period following the war. It has the power to administer oaths and the power to compel testimony under oath.

The House of Representatives and the General Court of Massachusetts passed an order on March 16, 1923, as follows:

220 "Ordered that the Special Commission on the Necessaries of Life is hereby requested to investigate the recent rise in the price of sugar and the by-products of sugar in this Commonwealth, and report to the House of Representatives on or before April 15, 1923, such facts concerning said rise in price and alleged shortage of supply and the causes therefor as it may be able to determine."

Pursuant to that order the commission made an investigation. We obtained the testimony and opinion of local refiners—over eight hundred (800) candy, ice cream, syrup, and jam manufacturers, wholesalers, retail grocers, bakers, and others—as to the causes for and the effects of the recent rise in the price of sugar.

On April 2, 1923, an open hearing was held. There appeared Mr. William Van Warner, New England manager, American Sugar Refining Company; Mr. Charles F. Adams, representing John T. Connor Company, being the chain grocery store organization in New England, controlling something over two hundred (200) cash and carry stores, and distributing approximately 75,000 barrels a year in New England; Mr. Henry E. Worcester, vice president, Revere Sugar Refinery; Mr. Horace S. Ridley, vice president, New England Confectionery Company, which is the largest manufacturing confectionery company in New England, and consuming between

221 75,000 and 100,000 barrels per year; Mr. Arthur C. England, representing Silas Peirce and Company (Ltd.), large wholesale grocers and distributors of sugar, dealing in approximately 100,000 barrels a year; Mr. James D. Casey, vice president, Cobb, Bates, and Yerxa Company, large wholesale and retail distributors of approximately 75,000 barrels a year; and Mr. Charles L. Bird, secretary, New England Manufacturing Confectioners Association, whose constituent members consume nearly one-half million barrels of refined sugar a year. The hearing was held at the State House in Boston, Massachusetts, on April 2, 1923. The testimony was re-

ported by an official stenographer. Attached hereto is a correct copy of the testimony taken at that hearing, which is marked "Exhibit A" to this affidavit.

In addition to this hearing we also sent out about 1,000 questionnaires, and received 800 replies from candy, ice cream, syrup, and jam manufacturers, wholesalers, retail grocers, bakers, and others, asking them for their knowledge and opinion as to the causes and effects of the recent rise in the price of sugar.

222 We tried to make the investigation as universal as possible, and communicated with all classes who deal in and are large consumers of sugar.

We prepared a report and transmitted it to the legislature on April 15, 1923, which was printed by the house of representatives as House Document No. 1490. This report was based on the hearing of April 2, 1923, and the information obtained in response to our questionnaire. That report expressed our best judgment, based on all the information we could obtain from every source. I have with me a copy of the report as printed, and file the same as "Exhibit B" to this affidavit.

There is attached to said printed report three exhibits. Exhibit A is the statement of W. Van V. Warren, manager Boston sales office of the American Sugar Refining Company, and the statement of Henry E. Worcester, vice president of the Revere Sugar Refinery, Charlestown, Mass., at the conference on April 2, 1923, and these of refined sugar as to the causes and effects of the recent rise in the davit.

223 Exhibit B, House Document No. 1490, contains extracts from the opinions of representative dealers and large users of refined sugar as to the causes and effects of the recent rise in the price of sugar.

Exhibit C contains certain statistical information in regard to the sugar production of the world by years, from 1919 to 1923, inclusive. Exhibit C is taken from the sugar reports of Willet and Gray, who are generally recognized to be the most reliable trade statisticians in regard to sugar in the world.

Exhibit D is a copy of the statement issued by Secretary of Commerce Hoover on February 9, 1923, entitled "Trend of World Sugar Production and Consumption."

I am a civil engineer by profession. Was vice president of the West End Street Railway Company. I am at present engineer for the board of directors of the Boston Elevated Railway Company. I graduated from the Massachusetts Institute of Technology in 1896 as a bachelor of science, and have been engineer for various boards of directors, including the Fitchburg Railroad, West End
224 Street Railway Company, the Boston Elevated Railway Company, and am a member of the Boston Society of Civil Engineers, the American Society of Civil Engineers, and am engaged in a general practice of consulting, engineering, and auditing, particu-

larly investigations and valuations. I have been having an intensive course in applied economics since August, 1920, as fuel administrator and chairman of the Special Commission on the Necessaries of Life.

This affidavit is for use in the above-entitled cause on behalf of the United States.

All interlineations and filling in of blank spaces is in the handwriting of deponent.

E. C. HULTMAN.

Subscribed and sworn to before me this 30th day of April, 1923.

ANNA FAINS,

N. P.

225-226 [File indorsement: E. 26-255. U. S. District Court, Southern District of New York. United States of America, petitioner, versus New York Coffee & Sugar Exchange (Inc.), New York Coffee & Sugar Clearing Association (Inc.), et al, defendants. Affidavit of Eugene C. Hultman, chairman of special commission on necessities of life, in support of Government application for temporary injunction. William Hayward, United States attorney, attorney for U. S.]

Due service of a copy of the within is hereby admitted.

227 EXHIBIT A TO HULTMAN'S AFFIDAVIT.

228 Order of the house of representatives relative to recent rise in price of sugar and the by-products of sugar.

Hearing by the Commission on Necessaries of Life. Statehouse, Boston, April 2, 1923.

Present: Mr. Eugene C. Hultman, chairman of the commission (presiding); Mr. Bernard P. Scanlan, secretary of the commission; Mr. William Van V. Warren, New England manager, American Sugar Refining Company; Mr. Charles F. Adams, representing John T. Connor Co.; Mr. Henry E. Worcester, vice president, Revere Sugar Refinery; Mr. Horace S. Ridley, vice president, New England Confectionary Company; Mr. Arthur C. England, representing Silas Peirce & Co. (Ltd.); Mr. James D. Casey, vice president, Cobb, Bates & Yerxa Company; Mr. Charles L. Bird, secretary, New England Manufacturing Confectioners Association.

229 The CHAIRMAN. Gentlemen, the legislature passed an order which I will read, requesting this commission to investigate the recent rise in the price of sugar and the by-products of sugar in this Commonwealth.

(The chairman then read the order of the house of representatives.)

We have been trying to get a few facts together, and we thought a public conference of this kind was desirable. I believe there are

present representatives of refiners, distributors, and manufacturers, and I think we will start with the refiners and go down that way. Do you want to start, Mr. Warren?

MR. WILLIAM VAN V. WARREN, New England manager, American Sugar Refining Company. I have prepared a statement which by permission I will read to you.

Mr. Chairman and gentlemen of the commission: Before referring to the existing sugar situation, about which I understand you desire an expression of my views, I feel it would be helpful to you for me to refer briefly to some of the salient features of the sugar industry, and in particular to describe the method of purchase and sale of raw sugar and the factors that go to make up the price of refined sugar.

Prior to 1922 the annual consumption of sugar in the United States was slightly in excess of 4,000,000 long tons. According to Willett & Gray, recognized sugar statisticians, the country's consumption in 1922 was 5,092,758 long tons, an increase of about 230 1,000,000 tons over 1921 and a percentage increase of 23.9%.

The principal sources of supply of sugar consumed in the United States are Cuba, Porto Rico, Hawaii, and the domestic beet and cane sugar. Cuba supplies approximately 50 per cent of our country's needs, while the domestic production of beet and cane sugar, including our possessions—Porto Rico, Hawaii, and the Philippines—is about 45 per cent. The only domestic sugar offered in the eastern markets of the United States is that from Porto Rico and a small amount from the Philippines.

An analysis of the price of refined sugar made from dutiable sugar shows that it is composed of three distinct factors: (1) The cost to the refiner of raw sugar; (2) the customs duty of 1.76 cents per pound on Cuban raw sugar, and 2.20 cents per pound on raw sugar from other foreign countries; (3) the refiner's margin, which includes all operating costs and a reasonable profit.

The cost and freight price for Cuban raw sugar at the close of business last week, which is a price delivered at United States ports, without duty, was 5½ cents per pound. Before this sugar is available to the refiner the customs duty of 1.76 cents per pound and marine insurance must be paid, making the total cost to the refiner of such sugar approximately 7.41 cents per pound. Sugar from Porto Rico and the Philippines, on which no duty applies, is sold at approximately the duty-paid price for Cuban sugar. The cost of refining and a reasonable profit should be added to the duty-paid price of the raw sugar to make the price of refined sugar. Under normal conditions the price is arrived at in this manner, but it often happens that domestic raw sugar or beet sugar fixes the price. Refiners operate on a small unit of profit, and depend entirely on the volume of their operations to make a reasonable return on invested capital. On the entire operations of our company last year our operating profit was about one-fourth of 1 cent on each pound of raw sugar melted.

New York is the primary sugar market of the United States, and to-day, perhaps, it is the primary market of the world. All the foreign raw sugar producers have their representatives or brokers there, and they make daily offerings to the refiners. The refiners have no control over the offerings or the price of this raw sugar. They must buy in competition with the markets of the world. The demand for refined sugar is largely the controlling element in determining when and in what amounts a refiner should buy. Our company, and I believe it is true of other refiners, does not sell short. Before offering refined sugar to the trade, or accepting orders, we have already committed ourselves for the equivalent amount of raw sugar. If there is an active demand for refined sugar there is usually a corresponding activity in the raw-sugar market. If the demand for refined sugar is light, naturally the refiners do not purchase and the raw sugar market is inactive.

As distinguished from the purchase and sale of raw sugar for actual delivery to the refiners there is a speculative buying and selling of raw-sugar futures on the New York Sugar and Coffee Exchange. Our company is not a member of this exchange and does not operate thereon, and so far as I am advised the same situation is true of other refiners. The dealings on that exchange are by operators and speculators. It is no doubt a fact that the prices fixed by these corporations, to a considerable degree, control the price at which actual raw sugar is offered to the refiners in New York.

The CHAIRMAN. What do you mean by operators—speculative operators?

Mr. WARREN. Speculative operators.

The CHAIRMAN. Speculative operators and other speculators practically control the New York market?

Mr. WARREN. Coming now to a discussion of the unsettled condition that has existed in the sugar market for the last six weeks. I will not burden you with a statement of the conditions leading up to the sugar crisis of 1920 and the trend of the market since that time. However, the reverses of 1920, the elimination of rationing regulations in foreign countries, and the readjustment of the world's markets have all had their effect on the world's sugar situation, and indirectly an effect on the situation in this country. The first serious disturbance in the industry of the United States this year was early in February, when "sugar shortage" stories were broadly circulated as the result of an unfortunate heading on an advance report of the world's sugar position, issued by the Department of Commerce. At about the same time the Cuban crop estimate of 1923 was substantially reduced by a recognized authority. These two factors brought about unprecedented speculation on the sugar exchange and hysteria in the trade, both of which have had the effect of maintaining an unsettled condition until the present time. The facts surrounding the beginning of this disturbance are as follows:

On February 9th, the Department of Commerce released, for use not earlier than February 12th, a summary of an article 233 on sugar production and consumption, to be published in the Commerce Reports issued February 12, 1923. The advance release contained the following headlines:

"Trend of world sugar production and consumption. Production for 1923 only 125,000 tons higher than last year. Consumption needs estimated at 725,000 tons above production."

This story was featured in the press in sensational headlines as early as the morning of February 10th. It was clearly interpreted as an announcement by the Department of Commerce that there would be a sugar shortage, as is evidenced by the following headlines taken at random from recognized publications, which are typical of hundreds of others:

"World shortage of sugar is forecast," Journal of Commerce, February 10, 1923.

"Shortage of sugar indicated for 1923," New York Herald, February 10, 1923.

"World shortage of sugar seen in crop estimate," New York American, February 10, 1923.

"725,000-ton shortage of sugar is predicted," New York Tribune, February 10, 1923.

"Sugar shortage predicted for 1923," New York Times, February 11, 1923.

"World shortage seen in sugar crop of 1923," Public Ledger, Philadelphia, February 10, 1923.

"World shortage of sugar is predicted," Los Angeles, Cal., Express, February 10, 1923.

"Sugar prices soar on predictions of crop shortage," Chicago Herald & Examiner, February 14, 1923.

"Sugar dearth is forecasted," Detroit Free Press, February 10, 1923.

"Sugar shortage is indicated by report of world's output," Ohio State Journal, February 10, 1923.

"Sugar shortage seen as demand in U. S. increases," Times Picayune, N. O., February 10, 1923.

234 "World sugar shortage predicted for this year," Baltimore Sun, February 10, 1923.

"Predict world sugar scarcity," Boston, Mass., Herald, February 10, 1923.

While the report of the department continued the headlines above quoted, it should be said that a careful analysis of it would have disclosed that instead of predicting a sugar shortage it, in fact, showed that there would be a surplus at the end of 1923, if the supply of sugar carried over from last year was taken into consideration. In other words, the body of the statement showed that the carry-over at the end of 1922 was approximately 1,200,000 tons, and that if the world's consumption in excess of production for 1923, which

was estimated to be 725,000 tons, was deducted from the carry-over from 1922, there would be a surplus at the end of 1923 of approximately 476,000 tons. This part of the statement was later called to the attention of the public, both by Secretary Hoover and other representatives of the department. However, the headlines of the department's advance notice had been so featured and given such wide publicity that the subsequent announcements had but little effect in quieting the highly excited sugar market.

Just about this same time, on February 12th, Guma-Mejer, the generally accepted authorities on Cuban production, reduced their former estimate of the 1923 Cuban crop by approximately 400,000 tons. Their estimate of the 1923 Cuban crop, on December 18, 1922, was 4,193,500 tons. The revised estimate of February 12th placed the crop at 3,800,000 tons.

The public had the opportunity, over the week-end of February 10th and the holiday of February 12th, to digest both of these 235 alarming reports. On February 13th the raw sugar market reflected advances unknown in the trade since 1920, and enabled speculative interests to advance prices in the maximum amount permitted in one day on the New York Sugar Exchange. I do not think that I could better describe the situation existing at that time than to quote the Daily Sugar Trade Journal of Willett & Gray of February 13, 1923:

"A widely speculative and very dangerous market has appeared in raw sugars. At the opening of the sugar exchange today, sugar options were up 1 cent a pound and this brought options on the exchange up to the exchange rule of allowing only a fluctuation of 1 cent a pound during a day. This speculative movement commenced on Saturday, the option market on that date being up from 20 to 40 points, making a total advance in options since Friday night of about 1.60 cents a pound. This naturally excited the actual raw sugar market and speculators were able to bid correspondingly high prices for actual Cubas, against which they sell options on the exchange, which resulted in sales today of Cubas at $5\frac{1}{2}$ cents c. & f. (equal to 6.91 cents duty paid), $5\frac{3}{4}$ cents c. & f. (7.16 cents), $5\frac{7}{8}$ cents c. & f. (7.44 cents), and about 6,000 tons of San Domingoes, Peruvian, Haytian, etc., sugars at 5.00 cents and $5\frac{1}{2}$ cents c. i. f. New York, but with operators now bidding $5\frac{3}{4}$ cents c. & f. without obtaining Cuban sugar. This an advance of 1.00 cent a pound over sales made on Saturday to speculators of Cubas at $4\frac{7}{8}$ cents 236 c. & f. for Cubas. The advance is directly attributable to the misleading statement issued by the U. S. Department of Commerce, indicating a decided scarcity of sugar throughout the world and which was followed this morning by a reduction in the Cuban crop estimated by Messrs. Guma-Mejer, of Havana, to 3,800,000 tons."

Willett & Gray weekly of February 15, 1923, stated: "Now and

"Refiners took the only course possible with the wildly speculative raw market and all withdrew as sellers of refined sugar during the

wild advance in raws, leaving the quotation nominal at 7.25 less 2 per cent."

In the weekly issue of February 21, 1923, Willett & Gray said: "The market during the week has been entirely under the influence of speculation, refiners participating in the purchasing of raws to only a limited extent and then only replacing with raws the refined sugar which they have sold at present refined prices. Refiners appear to be acting conservatively, undoubtedly believing that present prices are unwarranted by actual conditions, although the speculators, particularly that class which has been misled by the reports of a shortage, have been able to push up options on the exchange sufficiently high to pay $5\frac{1}{4}$ cents c. & f. (7.03¢) for Cubas."

On February 9th sales of raw sugar were made at 4 cents and $4\frac{1}{4}$ cents, c. & f. On February 14th raw sugar was offered at prices as high as 6 cents c. & f., with no buyers. On February 15th there was a temporary reaction and raw sugar was offered at $4\frac{1}{4}$ cents c. & f. From that date the raw market increased to $5\frac{1}{4}$ cents on February 23rd. There was a slight decline on February 26th and 27th, but from that date the market was strong and the peak price of $5\frac{1}{2}$ cents was reached on March 12th. Since that time the price of raw sugar has fluctuated between $5\frac{1}{4}$ cents and $5\frac{1}{2}$ cents, cost and freight. These increased prices for raw sugar forced the refiners to make corresponding increases in the price of refined sugar. The first increase after the disturbance in the raw sugar market was on February 15th, when the price was increased from 7.25, the price prevailing on February 9th, to 8.25, although one refiner quoted 8 cents and others named 8.30. On February 23rd the price was increased to 9 cents, on March 2nd it was increased to 9.15, and on March 13 to 9.30 cents. There was little business done at the latter figure, and on March 31st the price was reduced to 9.00 cents. During all of this period there was some difference in the prices as between the different refiners. The maximum increase in the price of raw sugar, cost and freight, since February 9th, has been approximately $1\frac{1}{4}$ cents per pound. The price of refined sugar to-day of 9 cents is an increase of $1\frac{1}{4}$ cents per pound over the price in effect on February 9th.

It is interesting to observe that the present price of 9 cents per pound is identically the price fixed for refined sugar during the entire year of 1919 by the United States Sugar Equalization Board, an arm of the U. S. Food Administration. During that period all the refiners of the United States operated under a contract whereby they secured their raw sugars from this governmental agency at 7.28 cents per pound, duty paid, which is approximately the duty paid price of Cuban raw sugar to-day.

The CHAIRMAN. What was the duty in 1919?

Mr. WARREN. I believe the duty was slightly over 1 cent.

The CHAIRMAN. As against what?

Mr. WARREN. 1.76.

The CHAIRMAN. Thank you.

Mr. WARREN. During 1919 the refiner's margin was fixed by the United States Sugar Equalization Board at 1.54 cents. Allowing for the 2 per cent discount, the net price of refined sugar to-day is 8.82. With raw sugar costing 7.41 cents per pound, duty paid, the price at the close of the market last week, the refiner's present margin is 1.41 cents per pound, or less than that fixed by the United States Sugar Equalization Board in 1919. It is interesting to observe also, that the present price of refined sugar is the same as that fixed by the United States Government in 1919, notwithstanding the fact that the customs duty, one of the factors that goes to make up the price, has been increased nearly 1 cent per pound since that time.

On February 21st, during the height of the excited condition, Mr. Earl D. Babst, the president of the American Sugar Refining Company, issued a public statement in an effort to forestall even a start of conditions which led to the unfortunate crisis of 1920. In the course of that statement Mr. Babst said:

239 "The supply of sugar in the United States according to our weekly canvass is ample. We have on our books practically a thirty days' business for our customers and have raw sugar to operate all of our refineries at capacity for that period. The one thing, however, that we, as refiners, cannot provide against is a stampede either in the trade or among consumers. Such unthinking action only pays into the hands of speculators and the public puts up sugar prices on itself unnecessarily. These facts are given to the public in an effort to forestall even a start of conditions which led to the over-buying of 1920.

Sugar statisticians, whether Government or private, should remember that they have only part of the facts. It is their office simply to record statistics. When they comment on their statistics or prophesy, they then step out of their office and do so with grave risk to the public. The present speculation on the New York Sugar Exchange is greatly to be deprecated. Those who foster it and those who follow it are introducing a gambling element into a food necessity, which in my judgment should be left entirely to the law of supply and demand."

The expressions contained in that statement sum up the entire situation and our position in regard thereto. The available supply of refined sugar in the United States is ample for all present demands. No one, of course, can predict what the final outturn of the crops will be, or the amount of sugar that will be consumed in the

United States this year. Without these two necessary factors
240 no one can fairly estimate whether there will be a surplus or a shortage of sugar this year. Any predictions, therefore, are entirely speculative. No prediction as to the future sugar supply has been or can be made by any official of this company. Every sugar shortage has been largely attributable to overbuying and hoarding. The public can prevent a shortage and bring about a stabilization of the sugar market by ignoring sensational and alarming stories and

only buying sugar as their normal demands require. The refiners desire stability in the sugar market rather than high prices.

The public provides the final sugar market, and after all it is the public that really controls the entire situation. If the housewives and others in the sugar trade buy their sugar regularly and in the customary way, without attempting to hoard it or boycott it, the situation will undoubtedly adjust itself.

The CHAIRMAN. Did you make a statement that they estimated a 23 per cent increase in consumption?

Mr. WARREN. Yes; an increase of about 23.9 per cent.

The CHAIRMAN. Over last year?

Mr. WARREN. That is 1922 over 1921.

The CHAIRMAN. 1922 increased 23 per cent over 1921. This New York Exchange business is rather interesting to me. That practically fixes the price for all your sugar?

Mr. WARREN. It undoubtedly has a considerable effect upon the price of raw sugar that is actually offered to refiners.

The CHAIRMAN. How much does the American Sugar Company raise of their own sugar?

Mr. WARREN. I should say about 7 per cent of our actual requirements.

The CHAIRMAN. Then you make contracts covering a considerable period, with raisers, or how do you get it?

Mr. WARREN. Our sugar is purchased sometimes in the port of New York and sometimes it is purchased for certain specific deliveries. There is no definite way.

The CHAIRMAN. You try to buy ahead more or less?

Mr. WARREN. We more or less have to in order to assure ourselves of a supply.

The CHAIRMAN. Are those contracts made contingent upon the price at New York?

Mr. WARREN. That I could not say.

The CHAIRMAN. The way it lay in my mind from reading this was that while none of the larger refiners or consumers that we have been able to get hold of do any business through the New York Exchange; as a matter of fact it did fix the price of sugar; that is, the price there was the price governing in regard to both the retail price and the going raw sugar price of your company, buying from producers; is that so?

Mr. WARREN. I should say that the prices quoted on the New York Sugar Exchange affect the actual offerings of raw sugar only indirectly. They may follow this price and they may not.

The CHAIRMAN. The retail prices follow the upward movement of the raw sugar price on the New York Exchange?

Mr. WARREN. The retail prices follow the upward movement of the raw sugar price to the various refiners. I think you will find that the retail price of sugar in New England depends very largely on the current quotations of the sugar refineries themselves.

The CHAIRMAN. They follow the New York price!

242 Mr. WARREN. They follow the New York price.

The CHAIRMAN. I was just wondering how important were price fluctuations of the New York Sugar Exchange in which apparently very few actual sugar consumers, distributors, or refiners participated. It seemed to me that that price, fixed by speculators to a large extent, governed the prices of the whole business.

Mr. ADAMS. When you say New York price, what do you mean?

The CHAIRMAN. I mean that the retail price begins to follow very closely on the rise of prices of raw sugars on the New York Exchange.

Mr. WARREN. I would say that the offering price of actual raw sugar to the refiners is based very largely upon the current prices on the New York Sugar Exchange.

The CHAIRMAN. There are all kinds of sugar offered on the New York Exchange—beet sugar and Cuban sugar, or is it just raw cane sugar?

Mr. WARREN. I am not sure on that point.

Mr. WORCESTER. There are two sugar exchanges, the raw sugar exchange and the refined sugar exchange. The raw sugar exchange deals in all kinds, beet and everything else.

The CHAIRMAN. The refined sugar end of the New York Sugar Exchange is comparatively trivial?

Mr. WORCESTER. Very trivial.

Mr. ADAMS. I heard you make the statement that you found no dealers or retailers or anyone else who used the New York Sugar Exchange as a medium of trade to any considerable extent. Is that true as far as the refiners go?

The CHAIRMAN. I believe Mr. Warren testified that the
243 American Sugar Company does not use it.

Mr. ADAMS. Who does use it?

The CHAIRMAN. That is one thing that occurred to me. I thought I would like to get an idea as to who did use it. It seemed to me that the New York Exchange was a rather extraordinary institution, different from your cotton exchange or other commodity exchanges where the people can take delivery. Of course, they can take delivery, but they take delivery of a commodity that they can not use.

Mr. WORCESTER. The sugar exchange is not an institution that deals in spot sugar for immediate delivery, but is a matter of betting on the future. There is a great deal more sugar sold than is ever taken delivery of, and there is a great deal more grain sold than is ever taken delivery of.

The CHAIRMAN. I wanted to get an idea of the proportion dealt in on that exchange which was taken delivery of or whether it was a gambling proposition.

Mr. WORCESTER. I think a comparatively small amount is taken delivery of.

The CHAIRMAN. Apparently there is an exchange there and a market which is I do not know what per cent speculative, but it does seem to have a very material effect upon the price of a commodity. However, that is outside of our jurisdiction.

What can you tell us about exports, Mr. Warren? Are they running high?

Mr. WARREN. I am not in a position to say anything on the export market. We handle that entirely through our New York office.

The CHAIRMAN. What can you tell me about the price of 244 sugar in foreign countries? Does that follow closely our price? I do not mean raw sugars. I mean refined sugars. We have had statements made to us that the resale price of sugar here is the amount of the tariff above what it is in England. Can you give us any information on that?

Mr. WARREN. I have not looked up anything on that, but I will see what I can find. I think in our annual report we worked up something on that. [Handing annual report of American Sugar Refining Company.]

The CHAIRMAN. This is the average wholesale price for refined sugar in the United States and in foreign countries. What I had in mind was more the retail price.

Mr. WARREN. That I have not looked up.

The CHAIRMAN. What effect do you expect the increase in price will have on consumption? Or, to put it the other way, was your consumption last year abnormally large, due to the comparatively low price of sugar?

Mr. WARREN. As a rule we find that high prices do curtail consumption.

The CHAIRMAN. So if a high price should obtain for the whole year, probably the consumption would not increase as rapidly as if it were a lower price?

Mr. WARREN. I think undoubtedly it would have some effect on it.

The CHAIRMAN. The order says something about by-products. It is not quite clear to the commission what they meant by by-products. Are there any by-products?

Mr. WARREN. The only by-product that amounts to any 245 thing is the refiner's syrup, and most of that is exported. The price of that does not follow the price of refined sugar in any

way.

The CHAIRMAN. That, I suppose, is molasses?

Mr. WARREN. It is nonedible molasses. It is not the kind of molasses that you could put on the table.

The CHAIRMAN. What are the uses of it?

Mr. WARREN. A great deal is exported to Europe and blended with other syrups and made into table syrup, and some of it is used here in the manufacture of industrial alcohol.

The CHAIRMAN. Has the price of that materially advanced?

Mr. WARREN. It has advanced slightly.

The CHAIRMAN. Is that sold on a sugar-content basis?

Mr. WARREN. No.

The CHAIRMAN. I think that is all, Mr. Warren.

Mr. Worcester, do you want to tell us the Revere Sugar Refinery's side of it?

Mr. HENRY E. WORCESTER, vice president, Revere Sugar Refinery. Mr. Hultman, I have merely written a letter in response to your inquiry.

The CHAIRMAN. Do you want to read your letter?

Mr. WORCESTER (reading):

MARCH 29, 1923.

Mr. EUGENE C. HULTMAN, *Chairman,*
Special Commission on the Necessaries of Life,
Room 112, State House, Boston, Mass.

DEAR SIR: In compliance with your request that we tell you
246 what we believe are the reasons for the advance in price of
granulated sugar since the first of 1923, we submit as follows:

The principal sources of sugar supply for the United States are as follows: Domestic beet sugar; domestic cane sugar, principally from Louisiana; nonduty-paying sugars from Porto Rico, Hawaii, and the Philippines; duty-paying sugars (this group comprises all sugars except those specified above).

The full duty on 96° sugars is 2.206 cents per pound. Cuban sugar, on account of treaty giving Cuba a 20% differential duty, pays only 1.764 cents per pound 96° sugar. This means that as long as Cuba is able to supply the outside sugars necessary for our consumption the price of Cuban sugars is going to determine the price at which our granulated sugar can be sold by the refiners.

At the beginning of this year the amount of Cuban sugar left over from the 1922 crop was very much smaller than the amount on hand January 1, 1922, left over from the 1921 crop.

The estimated size of the 1923 crop was approximately the same as the outturn of the 1922 crop, therefore the amount of sugar available from Cuba for 1923 consumption was estimated to be less than that consumed in 1922.

247 All this pointed to prices at least as high as those prevailing at the end of 1922.

From the reports received from our affiliated plantations in Cuba, their crop is going to fall far short of their original estimates for 1923, and as this condition prevails on several other large estates in Cuba to our knowledge, it is reasonable to expect that the crop in Cuba will be smaller than was originally looked for.

The financial situation in Cuba has changed from that which formerly existed. Instead of a large number of small companies dependent on the banks to finance their crops, the sugar business has largely passed into strong financial hands. This financial independence should allow the producers to sell their crops over a whole year and not cause the usual slump in prices early in the

year on account of the producers' necessity of raising money on their sugars as fast as produced so as to take up their bank loans.

This would not necessarily mean a higher average price for the year but would tend to prevent wide fluctuations in price.

We believe that a fairly high price for raw sugar this year is justified by the economic condition brought about by a smaller Cuban crop, a smaller carry over of old sugar, and the general prosperous condition of this country which usually means large sugar consumption.

We believe that the cost and freight price for Cuban raw sugars will be higher before the season is over than it is at present.

248 If the price of raw sugar in this country becomes higher than it should, sugars will be at once attracted from other parts of the world and thus depress the price by that best of all regulators—supply and demand.

It may interest your commission to know just how the price of raw sugar affects the price of refined granulated sugar as sold by the refiners to the wholesale grocers and jobbers.

Cost and freight price 96° raw sugar plus duty—cost 100 lbs. 96° raw on refinery wharf.

It takes 107 lbs. 96° raw to make 100 lbs. granulated, so you should add 7% to above figure to get cost of raw sugar required to make 100 lbs. granulated.

The difference between this figure and the net price of granulated as quoted must cover the whole cost of refining, putting in packages, and delivering the finished sugar, as well as the refiner's profit. For example, 96° raw is quoted today at 5.63 cost and freight New York. Refined granulated is quoted to-day at 9.00—2%—8.82 net.

96° raw, per 100 lbs	\$5.63
Duty on 100 lbs. 96° raw	1.76
Cost 100 lbs. 96° raw duty	7.39
7% shrinkage	.52
Cost 96° raw sugar to make 100 lbs. granulated	7.91
Net price 100 lbs. granulated	8.82
Balance available for refining cost, plus profit	.91

From the above illustration you can easily see the part that duty plays in fixing the price of refined sugars, and that any reduction in duty is sure to be reflected in the price the public has to pay for the sugar it consumes.

249 We trust the above information is what you require.

Yours very truly,

HENRY E. WORCESTER.

The CHAIRMAN. Mr. Worcester, as I understand it, your company practically raises your own sugar?

Mr. WORCESTER. We raise our own raw sugar and refine it and accept the market price fixed by competition as the price for our product.

The CHAIRMAN. That is, the price of raw sugars is what you base it on largely?

Mr. WORCESTER. We fix our price for granulated by the market price at which you can sell sugar in competition, and, I might say, that the competition between the refiners in this country is so great that there is precious little chance of any refiner being able to get a much bigger price for his product than he should. The competition is very close. You will see that this margin of 91 cents a hundred pounds allows for a mighty narrow margin for the refiner.

The CHAIRMAN. Your company does not have to participate or have to buy on the New York Sugar Exchange?

Mr. WORCESTER. No, sir.

The CHAIRMAN. Tell me something about how the sugar is moved in here from Cuba. We have a lot of estimates as to what is going to happen in the future. Tell me something about how your sugar has to come in this year as compared with last year up to this time.

Mr. WORCESTER. Our sugar has come in considerably slower this year than it did last year, owing to the fact that our plantations are not making so big a crop as they did last year, owing to the 250 drought, and the sugar has been shipped to us from Cuba as fast as it was made. We have no stock of raw sugar at all, either in Cuba or here.

The CHAIRMAN. How have your actual receipts this year compared with last year?

Mr. WORCESTER. We have made, I think, about 60,000 bags less sugar this year than we did last year at this time.

The CHAIRMAN. What time does your year begin?

Mr. WORCESTER. We start to grind sugar in Cuba generally about the first of January, and this year one of our plants started the 16th of January and the other on the 31st.

The CHAIRMAN. How large a percentage are you behind this year compared with last year?

Mr. WORCESTER. We are a big percentage. Our production is at least 10 per cent behind what it was this time last year, and we estimate our total production for this year will be at least 30 per cent less than it was last year. In our particular case we are considerably behind last year's production up to this time. That is not true taking in the whole island of Cuba. Their production up to the present time I believe is bigger than it was last year.

The CHAIRMAN. Their production up to date in Cuba is larger than it was last year?

Mr. WORCESTER. That is, taking Cuba as a whole; but that is not true of our plantations in that end of the island.

The CHAIRMAN. Cuba as a whole is ahead of last year?

Mr. WORCESTER. Yes, sir. I have not seen the figures for last week, but a week ago they were 450,000 tons ahead of the same time last year.

251 The CHAIRMAN. I take it that between you and Mr. Warren's concern you supply most of the sugar that is used in New England?

Mr. WORCESTER. Yes; we do.

The CHAIRMAN. What would it be? 90 per cent?

Mr. WORCESTER. Of course, the sugar that the American and Boston sells, the supply is fixed by railroad rates. I think it is fair to say that we supply pretty nearly 100 per cent of the sugar right around Boston and up through Maine, New Hampshire, and as far west in this State as Worcester. When you go beyond that, New York sugars can get in on even terms with us.

The CHAIRMAN. As far as refiners go, we have practically covered the whole of Massachusetts when we talk to you and Mr. Warren?

Mr. WORCESTER. No; from Springfield west I think New York puts in fully as much sugar as Boston does. Mr. Warren's company may put a great deal of sugar in from New York, but the other New York refiners put a good deal of sugar into the western part of Massachusetts. Our territory—we call it our territory because we have better railroad rates than anybody else—is right adjacent to Boston. Don't you think that is a fair statement, Mr. Warren?

Mr. WARREN. Yes. We get a good deal of our business in Vermont and Rhode Island, and we have had some in Maine.

The CHAIRMAN. I wanted to be sure that the commission was covering the whole refining end. It seemed to me that when we got the American and the Revere, we had covered that end. How about your refined output this year as compared with last year?

252 Mr. WORCESTER. Our refined output will vary almost exactly as the raw sugar we get. We bought one cargo of raw sugar because we ran out of raw sugar before our own sugars came forth.

The CHAIRMAN. You generally plan to run your refinery and not store? You want to keep it moving?

Mr. WORCESTER. We want to keep it moving as fast as we can.

The CHAIRMAN. Is your storage capacity great or small?

Mr. WORCESTER. Our storage capacity for raw sugar is quite large, because between our plants in Cuba and our plant here we have to store enough raw sugar to carry us over the times when our raw sugar plants are shut down. The refined sugar production goes on through the year.

The CHAIRMAN. You say the financial situation in Cuba has changed?

Mr. WORCESTER. Yes.

The CHAIRMAN. One of the things we have been asked about is whether this was a conspiracy, if you will, on the part of the Cuban to recoup his losses out of us, and there have been various statements that the Cuban was not in control of the conditions down there. Do you know anything about it?

Mr. WORCESTER. Merely that prior to 1920 there were a great many small plantations throughout Cuba run by individuals or small corporations, and they almost all went broke in 1920, and the properties have been taken over very largely by the banks.

The CHAIRMAN. In Cuba or the United States?

Mr. WORCESTER. Some in Cuba and some in the United States and some by Canadian banks.

253 The CHAIRMAN. They got into it last year?

Mr. WORCESTER. They got into it and were left with the property and they had to run the property in order to have any chance of getting back the money which they loaned on them.

The CHAIRMAN. There have been statements made to us that practically the whole thing was in the hands of bankers in this country.

Mr. WORCESTER. I think the only difference between that time and now is that the little fellow, if he had a few thousand bags of sugar and saw there was a real shortage and he knew he could make more on his sugar later on, had to sell it; he did not have any choice. The months of February and March for a period of years have almost always been a period of low prices, because it was a period of large production, and it is one of our periods of small consumption up here. Therefore there was a large amount of sugar present on the market and not a very great demand for it.

The CHAIRMAN. Now, those small fellows are in the control of bankers?

Mr. WORCESTER. They are owned by the banks. The small fellows have gone out of existence.

The CHAIRMAN. What about the exports? We are continually being told that granulated sugar is sold in England for less than it is here.

Mr. WORCESTER. That is a statement you very often see in the newspapers. Whether the fact is purposely distorted or not, I do not know. The fact is that the price is made up of the cost of raw

254 sugar, the duty, the refiner's cost, and the profit. When that sugar is exported the Government gives us back the duty. If you do not have to pay 1.76 duty, your raw sugar costs you that much less. This sugar that we sell at a lower price goes to England or France and has to pay a duty over there. It does not reach the consumer at the lower price. It is only the difference in the amount of the duty. We pay the duty and the Government pays us back the duty that we pay, less 1 per cent for handling the business.

The CHAIRMAN. Thank you, Mr. Worcester. Have you anything to say about by-products?

Mr. WORCESTER. By-products? The only by-product of sugar that I know of, except the syrup that Mr. Warren has spoken of, is candy.

The CHAIRMAN. It is not clear what the legislature meant by by-products, whether it was the alcohol or the molasses, or whether it should be described as a manufacturing by-product, which I should not think was a by-product.

Mr. WORCESTER. I think you would be justified in thinking that the only by-product in the manufacture of sugar is the syrup, black scrap or molasses that is turned out.

The CHAIRMAN. That is what the commission took from the term by-products.

Mr. RIDLEY, you are a manufacturer using large amounts of sugar. Will you tell us something about it?

Mr. HORACE S. RIDLEY, vice president, New England Confectionery Company. I do not think I can add anything to what has been said. I do not believe that they are overbuying or hoarding.

The CHAIRMAN. You mean the manufacturer?

255 Mr. RIDLEY. I mean the manufacturer.

The CHAIRMAN. Do you care to say roughly how much sugar your concern uses?

Mr. RIDLEY. We use in the neighborhood of 100,000 barrels a year.

The CHAIRMAN. How has this sudden rise affected your business?

Mr. RIDLEY. Very seriously. What I mean by that is that the advance in sugar compels manufacturers of general lines to change the prices very often and also change their packages. I mean by general lines small five and ten cent goods. It does not affect the manufacturers of fancy packages as much. A great many of our goods are based on the price of sugar.

The CHAIRMAN. Could you give me a rough idea of how large an element in your costs sugar is?

Mr. RIDLEY. I am going to ask Mr. Haywood to answer that question if he can.

Mr. HAYWOOD. I think over the year about 70 per cent of our raw material, 65 or 70 per cent, is sugar.

The CHAIRMAN. Do you use the sugar exchange as a means of protection?

Mr. RIDLEY. No.

The CHAIRMAN. What effect does an increase in price have on your business? Does it curtail consumption or does it have any material influence?

Mr. RIDLEY. Yes; I think it does.

The CHAIRMAN. You have noticed a fluctuation in the volume of your business in times of high prices?

256 Mr. RIDLEY. Yes.

The CHAIRMAN. In times of high prices against low prices?

Mr. RIDLEY. High prices generally mean an increase in dollars and cents but lower tonnage.

The CHAIRMAN. You do not use by-products of sugar?

Mr. RIDLEY. No, sir.

Mr. WORCESTER. Speaking of high prices, will it be possible to get the idea of the gentlemen present as to just what the words "high price" means, whether they consider that sugar has reached a point where it will be considered a high price? We always have in mind, I think, when we speak of high prices, the 22½ cent price of 1920. I wondered a great deal whether the increase in price as

high as a limit of 10 cents a pound really affects consumption or whether it does not.

The CHAIRMAN. Perhaps the chairman is to blame for that. Perhaps I should have said higher prices or lower prices instead of high prices and low prices.

Mr. WORCESTER. The present price of sugar at 9 cents is not, to my mind, a very high price compared with the high price of most other commodities, and I wonder whether some of these gentlemen who are actually dealing with the final man who buys sugar could express an opinion on that.

The CHAIRMAN. If Mr. Ridley cares to give us something on that?

Mr. RIDLEY. I would like to ask Mr. Worcester what is the average price of sugar for the last 25 years, eliminating 1920.

Mr. WORCESTER. I would say somewhere around 5 cents a pound.

257 Mr. RIDLEY. I would say a little higher.

The CHAIRMAN. You mean the granulated price?

Mr. WORCESTER. Five or six cents a pound.

The CHAIRMAN. Do you care to answer what your opinion would be as to the effect on the consumption of an increase of 50 per cent on an average for several years?

Mr. RIDLEY. I think consumption would be lower. The public are educated to sugar at retail from 6½ to 7 cents, and a great many times they would use a leader in the store, 20 pounds for a dollar, that is 5 cents a pound. It would be much healthier for manufacturers of sugar not only in condensed milk and gelatin but for confectionery manufacturers, and they would use a great deal more when sugar is around 6½ cents a pound.

Mr. WORCESTER. The average cost of living for a number of years has gone up more than that. The labor prices paid in your factory and our factory and other factories have increased considerably over 50 per cent over the period of time that you speak of. Don't you think that the people are educated to a higher range of prices than they were for the average of the last ten or fifteen years?

Mr. RIDLEY. They were educated to the fact that they were stung in 1920, and they have not got over it.

The CHAIRMAN. I was looking at this chart in the annual report of the American Sugar Refining Company, showing world consumption, and I wonder whether there is any relation there between price and consumption. Off hand I do not see it. Is there anything else, Mr. Ridley, that you want to give to the committee?

Mr. RIDLEY. I do not think of anything right now unless
258 there is some question you would like to ask.

The CHAIRMAN. No; I do not think there is anything more. Have we another manufacturer here? I think not.

Mr. England, what would you say about this thing?

Mr. ARTHUR C. ENGLAND, representing Silas Peirce & Company, Limited. There is not very much that a wholesale grocer can say,

The wholesale grocer is a distributor of merchandise and the effect of an advanced price on merchandise handled is principally in the cost of handling the same.

The capital required is increased, as, for instance, we have had an increase in price of nearly three cents per pound on sugar and that means that we required fifty per cent more capital to do the same amount of business.

We figure a handling charge on sugar of fifty cents per hundred and on a percentage basis, the percentage of profit based on a cost of \$9.30 against a cost of \$6.50, which it was previous to February 10th is reduced to a small amount.

Not alone is the cost increased on the handling of sugar but also increased on all articles of merchandise which contain sugar and on which any advance in the cost of sugar means an advance on the manufactured product.

The CHAIRMAN. You have been in the business quite a number of years?

Mr. ENGLAND. The firm has. I have been in it only ten or twelve years.

The CHAIRMAN. Can you give us any opinion on the influence of price on consumption? Do you notice it in your business?

Mr. ENGLAND. Not any increase in consumption. We only see the consumption as based on our sales.

The CHAIRMAN. What I had in mind was whether an increase of 50 per cent in the price of sugar caused fluctuations in the amount you handled.

Mr. ENGLAND. It would at a time like this, when the price has advanced because there has been large buying and hoarding, I think. We have handled nearly twice as much sugar this year over last year.

The CHAIRMAN. From January 1 up to date?

Mr. ENGLAND. From January 1 up to date we have handled twice as much sugar as we did last year in the same period. Last year the price ran around 5 cents.

The CHAIRMAN. Apparently it has stimulated demand?

Mr. ENGLAND. Yes; but it will not be increased throughout the year. In a wholesale grocer's business, unless he has a lot of merchandise at a lower price than the other man, his business throughout the year will remain about the same.

The CHAIRMAN. As I get it, you think this excess in demand that has been made on you is temporary?

Mr. ENGLAND. Yes.

The CHAIRMAN. How is the demand now?

Mr. ENGLAND. The is very little demand at present.

The CHAIRMAN. The demand has fallen off?

Mr. ENGLAND. It has.

The CHAIRMAN. You sell mostly to retail grocers?

Mr. ENGLAND. Solely.

The CHAIRMAN. Do you buy large amounts and store it, or do you keep it moving?

260 Mr. ENGLAND. We keep it moving.

The CHAIRMAN. You testified to what your margin is. You do it on a flat per pound basis?

Mr. ENGLAND. 50 cents a hundred is what we charge.

The CHAIRMAN. Your percentage of profit is much less at 9 cents than it is at 6 cents?

Mr. ENGLAND. Yes.

The CHAIRMAN. Mr. Adams, as a distributor, what do you want to give us that will help us?

Mr. CHARLES F. ADAMS, representing John T. Connor Company. I do not know that there is anything in the distributing situation. There is one thing that I do not quite understand in Mr. Worcester's statement, especially after hearing Mr. England. If I recollect correctly, Mr. Worcester when asked as to his output of refined this year compared with last year, said it was less, because he was hindered in getting raw sugar. The experience of Mr. England and most dealers, with the exception of manufacturers, has been that we were suddenly faced with an enormous demand, and most of us this year have sold more sugar than we did in the same period last year. Where did that sugar come from?

Mr. WORCESTER. There was an enormous demand for export last year which we did not have this year. During this period of the year we were shipping a great deal of refined sugar last year, and this year we shipped a comparatively small amount of refined sugar.

Mr. ADAMS. As far as this local market is concerned you have put more into it?

261 Mr. WORCESTER. I am not sure how those figures will shape up, but I know that is the difference between our last year and this year, that we have not sold any for export this year.

The CHAIRMAN. Does that apply to the American, too?

Mr. WARREN. Our business shows a slight increase this year over last year. We have not sold any for export from Boston at all. We do not ship any from Boston for export anyway.

Mr. ADAMS. From the consumer's viewpoint, as we take it from the refiner and distribute it to the consumer, I would say that the day that publicity came out we very suddenly got an extraordinary demand for sugar, and our business probably increased as rapidly as we could get sugar, something like 200 per cent. That speed maintained, being hindered only by the ability of our own transportation department and the ability of the refineries to furnish sugar. The public after a while commenced to stop their buying after the other sort of publicity had come out, and to-day they are back to a normal basis. If that was the condition generally all over the country it is very apparent that there must have been tremendous quantities of refined sugar available in that period to sell and that the people had got it instead of the raw sugar producers. I think the end will be determined entirely on the amount. The people will stop running

for sugar when they realize they have been hoodwinked, and they will come back on their feet again, having well remembered their 1930 lesson.

The CHAIRMAN. Do you care to say publicly about how much sugar you handle a year?

Mr. ADAMS. I would just as soon tell the gentlemen here. 202 We sell between 50,000 and 75,000 barrels, depending entirely on the conditions.

The CHAIRMAN. Meaning by that, what you are able to sell it to the consumer at?

Mr. ADAMS. No; it is dependent on the periods that we pass through. If we were running at the rate we were running through there we would sell 200,000 barrels. Our rate is pretty close to 60,000 barrels.

Mr. WORCESTER. I wonder if Mr. Adams, who is as close to the actual consumer as anyone I know of, would care to express his opinion as to whether a price of 9 or 10 cents for sugar would stop consumption to any great extent?

The CHAIRMAN. I would be glad to have Mr. Adams answer it if he cares to.

Mr. ADAMS. I do not really know. As to its retarding consumption I would say that people treat sugar above $7\frac{1}{2}$ cents retail as high priced. When it is lower than that it is reasonable. Above that it is high priced. Just how much it hinders consumption when the price is high, I do not know. In times like this when things are progressing, I would say it does not hinder it any. I do not think they discriminate very much except when times are hard. When they are out of a job they use very much less sugar anyway, whether it is 6 cents a pound or 10 cents a pound.

The CHAIRMAN. You do not think that people resent an increase in price such as has now occurred?

Mr. ADAMS. They resent an increase in the price of anything, and it is particularly noticeable that when any commodity is selling 203 above a fair advance over the old price, there is an invisible boycott. Just what causes it I do not know, but the public do economize on any article that is selling materially higher than it used to.

The CHAIRMAN. I suppose that is a proper working of the law of supply and demand.

Mr. ADAMS. Yes, sir; and it has been very effective in the last year on many commodities. I do not think there has been anything like a normal consumption of flour, during the past year, as far as our customers are concerned, and that is due to the fact that flour is \$10 a barrel, and they think \$7.50 a barrel is about right.

The CHAIRMAN. If they hold that frame of mind long enough they generally bring the price down.

Mr. ADAMS. Everything that we are discussing is labor. The commodity is harvested by labor, refined by labor, and handled by labor, and if labor is getting double the price is bound to be higher. The

higher the wage the higher the rent and the higher the price of sugar. Everything is higher. Everything in this room is labor, the table here, and even our clothes. There is not a single thing in it but labor.

The CHAIRMAN. There has been nothing brought out in this discussion on the price of sugar, that it is due to an increase in the cost of production.

Mr. ADAMS. No; not as far as it appears in this particular instance. This was a speculative advance or else it was because, as appears to us, of a cleverly engineered piece of publicity designed for one thing only—to unload a lot of sugar quickly or at a high price.

284 The CHAIRMAN. Do you think that has been accomplished?

Mr. ADAMS. Absolutely.

The CHAIRMAN. We might expect some amelioration in our conditions then?

Mr. ADAMS. Unless your crop is short. People will come back to sanity. If they have a lot of sugar in the pantry they are not going to buy any until it is consumed. If you have a supply of raw sugar sufficient to take care of the normal demand, I do not see why prices should be higher. If you have a short crop and the demand is greater, it is bound to be higher on the average.

The CHAIRMAN. You have no knowledge of by-products?

Mr. ADAMS. No. It is immaterial.

Mr. JAMES D. CASEY, vice president, Cobb, Bates & Yerxa Co. I think that the paper which Mr. Warren read and Mr. Worcester's statement cover the history of the situation pretty completely, and I quite agree with Mr. England and Mr. Adams in their general statement. As your prices were advancing we found there was quite a little scare thrown into the public; and even though we tried to stop it, people tried to get in on sugar. They did not seem to trust the statement of a grocer or trust the statement of your public commissions, because we told them in the runaway market of 1920 that sugar was not going up as a general thing. I think Mr. Adams advertised that sugar was not going up at that time. I am sorry everybody did not follow his advice. They were a little bit suspicious and they bought. To-day the market is flat. I did not go to the office this morning. I telephoned to see how sugar was moving, and

285 they said there was nothing doing.

We have a sort of diversified business, some retail trade with stores and some with institutions and hotels. About three weeks ago some of the hotels tried to get themselves protected on their summer supply of sugar and they were sort of putting the responsibility up to us. If we would ship 25 barrels they would pay next summer. If the market was up they would be pleased with the judgment we had. We could not get anybody to tell us what to do. The refiners are very cautious. I have never been able to have a refiner advise me to buy sugar. We have to sink or swim on our own judgment, and a grocer has not any great fund of information.

Mr. WORCESTER. They have as much as the refiner has.

Mr. CASEY. We have not any great knowledge as to what makes the price. We see the quotations on raws and we see the quotations on refined. As Mr. Worcester said, the refiner's profit appears reasonable. We naturally all try to use our best judgment in buying. To-day, owing to the propaganda that has gone out, this advance is without foundation. The sugar market is very stagnant with us, particularly at wholesale. People are only buying their real necessities, and at retail I think there is no great alarm just now. There was an alarm a short time ago when sugar was jumped from 6½ to 7.

One of the principal things to-day that is making it a puzzle for a wholesale buyer and a retail buyer is this: The price was advanced from 9.15 to 9.30, and some grocers bought more or less and were able to get it. It has gone back now to 9 cents and that sugar 266 is hanging on. It reminds me of the way the 22½-cent sugar hung on. It is staying with us pretty well. We are more stocked with 9-cent sugar than we were with 6½-cent sugar.

The CHAIRMAN. Whom do you blame for that?

Mr. CASEY. Our judgment.

The point that Mr. Ridley brings out I was just about to touch on. There is another thing that effects us Bostonians who try to ship sugar out of Boston. We are asked as to what is the cause of the difference in the wholesale price of sugar between Boston and New York. For instance, there is a price on the Arbuckle somewhat less than the Revere and Boston and also Federal. The Federal seems to be very bearish in their rumors, and I do not know but the Federal's advice in the long run would be the best to take; that is, buy from hand to mouth if we can get our supply. We tell our sugar buyer, "Don't be out of sugar." He was unusually cautious at 6½ and 7½ cents and we had to caution him not to be out of sugar, and he was cautious. But when it got to 9 and 9.15, he was not so cautious. I do not mean that we have any stock of sugar.

The CHAIRMAN. Do you care to say how much sugar you handle a year?

Mr. CASEY. I know we use a great deal more sugar than I wish, on account of the profit. We buy it all from the Revere and the American. I think it might approach Mr. Adams' figure. I would be very glad to look it up and supply you with the information. I ought to know, but I do not know.

Mr. ADAMS. As to that ad of ours that Mr. Casey spoke of, we said there would be no sugar famine, but results would indicate that there was.

267 Mr. CASEY. P. M. Leavitt & Company were offering sugar and urging it at 19½ cents. Mr. Adams came out and told the public not to get frightened, that sugar was not going up. On January 16, 1920, at an expense of \$1,000, we advertised in the Boston papers something like this: "We do not know whether sugar is going up or down; if you want any, we have it at 16½ cents a pound, limit 25 pounds to a customer. We reserve the privilege of filling

your order between now and February 1st or your money will be refunded."

I had the pleasure of attending a conference with Mr. Adams and Mr. Blood and Mr. Endicott. Mr. Blood said, "I predict you will fill that order with money instead of sugar." That was quite an encouragement. I said that I reserved that privilege. However, the working of it was this: We sold only 5,000 orders in New England on that ad and we filled every one of those sugar orders by midnight, January 31st, the last day of the month. It was quite a race, but we had them in our hands, and the money that came to use we did not deposit. We kept the checks on hand. You see how dubious we were of our ability to go through with it. There were only 5,000 orders of it, and it was 3 cents a pound under Mr. Leavitt's ad. Those were the three statements—Mr. Leavitt saying 19½ cents, Mr. Adams saying sugar was going to be cheaper, and I said I didn't know what it was going to do, but if you want it, here it is.

The CHAIRMAN. It would strike the chairman that you cleaned up

Mr. CASEY. I cleaned up that sugar that cost me 14.70, but there was some 22½-cent sugar that was not in that ad, later in the year.

268 Mr. WORCESTER. Mr. Casey brought up the difference in the price in the market between here and New York. There is a difference in quotations to-day. We have a customer who is located half way between here and New York. He buys from both New York and Boston. He is a customer in good standing of the books of the Federal Sugar Refinery, the one that has been quoting the lowest price. He has an order in the office of the Federal Sugar Refinery every single day for three weeks for two car of sugar. The order is placed there every day. He has not got a pound of sugar. People may have had different experiences. A good many times a quotation does not establish a market. It is the price at which you can buy sugar. I think our average Boston market is not any higher than the average New York market.

Mr. ADAMS. We are not a customer in good standing of the Federal, but we have been able to buy sugar from them, and it is shipped to Worcester from both places.

Mr. WARREN. Our price is the same all over the country.

The CHAIRMAN. You sell f. o. b. refinery and the freight is up to the customer.

Mr. CASEY. I do not know whether we are permitted to recommend for your consideration or suggestion, but as I gather from what Mr. Worcester and Mr. Warren say and from what the grocers say, none of us seem to know what the vocation is of this sugar exchange in New York. Mr. Ridley is a big dealer in sugar and has no connection with it; Mr. Adams is a big dealer and he has a connection with it. He is a representative of one of the biggest chain stores in the country. And Mr. England is a representative of one of the oldest and most reliable wholesale grocers. You

269 refiners say they do not know what the sugar exchange is

New York is for. Would it be within the province of Massachusetts to find out what that sugar exchange is and who are the members, how they buy and sell sugar, or is it something like a stock exchange?

Mr. WORCESTER. It is a branch of the coffee exchange.

Mr. CASEY. How many of their transactions are bona fide? During this rise in price it was a matter of information that a well-known movie actor dropped in to the sugar exchange and made a profit of \$15,000 or \$20,000, and he was not a sugar man at all. It must be a real institution of some kind, but here are a group that know nothing about what the vocation of that sugar exchange is.

Mr. WARREN. I have known people who have bought sugar on the sugar exchange. I have known that ordinary speculators and bankers have sometimes dabbled in it, the same as they have dabbled in the stock market, on grain or anything else. I have no doubt that Leavitt and Sherburne would deal in sugars on the exchange, and I think there are some customers in New England who do it as a speculation.

Mr. WORCESTER. The reason for that enormous advance in the option market of a cent a pound was simply because a lot of people thought sugar was going down and sold options against it. The time came when they had to make good on their options, and they had to go out and buy the sugar.

Mr. CASEY. Is it essential for the supply and demand, for the maintenance of the sugar industry, to have such operations going on?

Mr. WORCESTER. The increase in the price of sugar to the refineries was probably brought about by a good deal the same thing.

270 Mr. CASEY. Can you go on record in saying that a good deal of this advance in sugar is chargeable to the speculation in the exchange?

Mr. WORCESTER. I say the advance in sugar is due to the economic conditions due to a short crop. I will tell you whether I am right about next January.

Mr. RIDLEY. If the sugar exchange was eliminated what would happen to the sugar market?

Mr. WORCESTER. Personally, I do not think anything would happen.

Mr. ADAMS. It is not only the sugar exchange but the butter exchange. The sale of 25 tubs of butter on the New York Butter Exchange fixes the price of butter to a certain extent in New England. Those two particular exchanges are used for speculative purposes. They are sometimes manipulated and I think the results are disadvantageous to the consumer. The sugar exchange I do not know so much about.

Mr. WORCESTER. It is exactly the same thing.

The CHAIRMAN. This commission has no power to obtain information from an institution that is conducted in New York, but, of course, we are supposed to work, under our law, in conjunction with

the Federal authorities, and that is one reason I wanted to ask of you gentlemen, who are large dealers and manufacturers of sugar, whether you had any trading with it. It did occur to me that it was different from an exchange like the cotton exchange which deals in a commodity that even the ordinary man could take delivery of. It seems to me where your raw sugar is the large item in your sugar-exchange dealings, that the average man could not take delivery on it. It must be a gambling proposition.

271 Mr. WORCESTER. Could he not take delivery just as he could in cotton. The ordinary man does not have any use for raw cotton.

The CHAIRMAN. He has a much larger chance to sell it to a legitimate manufacturer. Here the only people he could sell it to would be the refiners.

Mr. WORCESTER. In every transaction in sugar on the sugar-option market that reaches its culmination by the man having to take the sugar, he has to sell that sugar to a refiner finally. The refinery is the final user of all the raw sugar.

The CHAIRMAN. There are only nine or ten refiners in the country, and here we have representatives of our refiners who do not deal with the sugar exchange. It is rather an extraordinary situation, it seems to me.

Mr. RIDLEY. It is a case of where anybody who has \$50 could go in and buy 50 tons of sugar.

Mr. WARREN. I have known of people in Boston to deal on the exchange in actual raw sugars, but it was done as a speculation.

Mr. ADAMS. We will say that the Connor Company bought a thousand tons of sugar on the exchange, and I offered it to you to buy, what would be your market? Would it be the exchange market or the real sugar market?

Mr. WORCESTER. The only thing that would interest us at all would be the real sugar market. A refiner can only buy sugar for one purpose, and that is to refine.

Mr. CHARLES L. BIRD, secretary New England Manufacturing Confectioners Association:

Mr. Chairman, of course, my interests especially are more in the results than in the causes, but I would like to go on
272 record with the commission on this particular point, that I have made a careful investigation among 50 manufacturers doing business at wholesale in Massachusetts, and I do not find anybody in the list who is buying sugar except for their immediate needs. There is no hoarding of sugar in the candy-manufacturing business.

The CHAIRMAN. Could you give me a rough idea of how much sugar your members use in a year?

Mr. BIRD. I can not offhand, but I will be glad to look into that.

The CHAIRMAN. Have you ever investigated the efficacy of the transactions or used the New York Sugar Exchange?

Mr. BIRD. I have talked with many of these 50 manufacturers, and I only know of one who has ever had any transactions in what they

call futures on the New York Sugar and Coffee Exchange, and I think that was absolutely a speculation on his part.

The CHAIRMAN. Have you any opinion as to the effect on the output of your members of a 50 per cent increase in the price of sugar?

Mr. BIRD. I think it has a tendency in a very marked way to retard the business.

The CHAIRMAN. You would not expect a large increase in consumption in a year that the price had gone up 50 per cent?

Mr. BIRD. No, sir. The steady increase in the price of sugar has necessitated the raising of the prices of candy much oftener than is healthy for the trade.

The CHAIRMAN. You get a more or less direct reflection in curtailed consumption as you increase your consumption?

Mr. BIRD. We do.

273 The CHAIRMAN. I suppose roughly the same figure would apply to your business as applied to Mr. Ridley's, of 70 per cent?

Mr. BIRD. I think, Mr. Chairman, that the average for the confectionery manufacturing business would be lower than 70 per cent, because a very large part of the business in volume in chocolate-covered goods.

The CHAIRMAN. Gentlemen, I think we have covered everything we can cover in a preliminary meeting of this kind, and if anything occurs to you gentlemen individually that you would like to give me that will be of assistance, I would appreciate it very much if you would. We have to make our report before the 15th of April.

Mr. RIDLEY. I might say that the manufacturing confectioners of the country only use about 8 per cent of the sugar that is produced.

The CHAIRMAN. Of the sugar that is consumed in the United States?

Mr. RIDLEY. And the other manufacturers about 33 per cent, including manufacturing confectioners.

Mr. WORCESTER. The big users of sugar are the people using it on their tables and in their cooking.

The CHAIRMAN. According to that, between 60 and 70 per cent of the sugar is used by the householder.

Mr. WARREN. In our business 30 per cent goes to manufacturers. It is impossible to say how much the wholesale grocer distributes to the small baker or small candy man who uses one or two barrels a week.

Mr. WORCESTER. The soft-drink people and the ice-cream people are large users of sugar.

274 Mr. WORCESTER. The soft drink people and the ice cream people are large users of sugar.

Mr. WARREN. Next to the confectioners and dealers in bakers' supplies, I figure that the condensed-milk manufacturers use a great deal of sugar.

The CHAIRMAN. What is the practice among the refiners? Do they sell ahead or do they sell at present prices? If I come to you do I make my arrangements a month or six months ahead?

Mr. WORCESTER. The usual practice is to buy for delivery within thirty days. The grocer who has to have sugar to deliver to his customers has to buy it ahead. The farther away he is from the source of supply the farther ahead he has to buy. As a general rule almost all our sugar contracts are for shipment within thirty days.

The CHAIRMAN. In other words the price at the time of moving it is largely the current price? You do not deal in futures?

Mr. WORCESTER. It is, if your price has not changed several times in 30 days.

The CHAIRMAN. I am very much obliged to you for this elementary course in sugar.

(Hearing adjourned.)

276 United States District Court, Southern District of New York.

[Title omitted.]

Affidavit of D. A. L'Esperance.

STATE OF NEW YORK,

County of New York, ss:

DAVID A. L'ESPERANCE, being duly sworn, deposes and says that he is special assistant to the Attorney General of the United States, at New York City, New York; and that he has read the following affidavit and knows the contents thereof; and that the allegations thereof are true to the best of his knowledge, information, and belief:

Deponent states that upon the filing of the petition in the above-styled cause on the 19th day of April, 1923, there was a decided decrease in the price of raw and refined sugar as quoted and sold to the said defendant, New York Coffee & Sugar Exchange (Inc.); and a consequent partial relief from the greatly enhanced and exorbitant prices for raw and refined sugar was brought about in the

277 United States thereby; but that on April 21, 1923, as a result and by making use of certain statements given to the daily press by an estimator in sugar statistics relative to the production of raw sugar, purporting to show that the production of raw sugar on the island of Cuba would be less than anticipated, these defendants, together with others, by making use of the facilities of defendants, New York Coffee & Sugar Exchange (Inc.) and New York Coffee & Sugar Clearing Association (Inc.), substantially increased the already enhanced and exorbitant prices for raw and refined sugar in the United States, to the great detriment and injury of a number of industries and the great consuming public; that as a matter of fact there was just as much sugar actually in existence on said April 21 as there had been in the preceding days, and this speculative estimate of Cuban production of raw sugar, in so far as it undertook to state a lesser supply of raw sugar from that source than had been previously anticipated, was of necessity

at that time and now, little, if any, more than a guess upon the part of such estimator; and that without the existence and use of the facilities of the instrumentalities established by these defendants in pursuance of their illegal confederation and purposes, such speculative public statement could and would not have so operated to the detriment of the industries and consuming public of the United States.

The decreases and increases in prices above alleged can be seen from the following tabulation showing such prices as made upon defendant, New York Coffee and Sugar Exchange (Inc.), for the days there shown:

978

Closing prices from April 17-April 21, 1923.

	May delivery.	July delivery.	September delivery.	50-ton lots bought & sold.
Apr. 17.....	6.06	6.27	6.41	871
" 18.....	6.30	6.52	6.66	1,596
" 19.....	6.00	6.21	6.35	1,796
" 20.....	6.01	6.24	6.37	845
" 21.....	6.33	6.57	6.69	1,036

That these defendants and other members of defendants, New York Coffee & Sugar Exchange (Inc.), and New York Coffee & Sugar Clearing Association (Inc.), are bound in the conduct of the business of buying and selling futures in sugar by the by-laws and rules of defendant, New York Coffee and Sugar Exchange (Inc.), by virtue of section 107 of such by-laws, which reads as follows:

"All rules adopted by the board of managers by a two-third vote shall be in force and binding on the members and shall govern all cases to which they may be applicable, after having been posted on the bulletin for ten days."

And that among the rules of the said defendant, New York Coffee & Sugar Exchange (Inc.), binding as aforesaid upon all of these defendants, and all the members of defendants, New York Coffee & Sugar Exchange (Inc.) and New York Coffee & Sugar Clearing Association (Inc.), in the conduct of their business in the purchase and sale of sugar, is the following:

279 "To avoid abnormal fluctuations of price and injurious speculation incident thereto, trades for future delivery in any month, during any one day, shall not be made at prices varying more than * * * one cent per pound for sugar above or below the closing bid price of such month of the preceding business session of the exchange.

"Nor shall trades in any month be made in any one day at an advance of more than * * * one cent per pound for sugar above the lowest previous price of such month on that day, or a decline of

more than two cents per pound for coffee and one cent per pound for sugar below the highest previous price of such month on that day.

"For the purpose of this rule the closing price shall be not less than the minimum price prescribed herein."

And that as alleged in the petition in the aforesaid cause, the price established by these sales and purchases on the floor of defendant, New York Coffee & Sugar Exchange (Inc.), control and regulate the price to be paid in actual business transactions involving the purchase, sale, and delivery of sugar on the markets of the United States; and therefore the next above quoted rule observed by these defendants and all members of defendant, New York Coffee & Sugar Exchange (Inc.), is a direct, immediate, arbitrary, and unreasonable restraint upon trade and commerce in sugar in the United States.

This affidavit is for use on behalf of the United States in the above-entitled cause. All interlineations and filling in of blank spaces is in the handwriting of the deponent.

DAVID A. L'ESPERANCE

Subscribed in my presence and sworn to before me this 30th day of April, 1923, in the city of New York, in the Southern District of New York.

ANNA FAINS,
Notary Public.

280 United States District Court, Southern District of New York.

[Title omitted.]

Affidavit of W. W. Gardiner.

STATE OF NEW YORK,

County of New York, ss:

WILLIAM W. GARDINER, being duly sworn, deposes and says:

That he is now a partner of Willett and Gray, whose principal office is at 82 Wall Street, New York City, New York; that for 30 years he has been employed by Willett and Gray in various capacities, in the course of which he has become familiar with the various phases of the sugar industry from the growing of cane and beets to the refining and marketing thereof; and that for 15 years he has been one of the editors of a weekly publication issued by that concern known as the Weekly Statistical Sugar Trade Journal;

that said publication is devoted to the interests of the sugar industry, particularly the collection, compilation, and publication of statistics; that all statistics published in said weekly publication are based upon reports directly received from authentic sources, having first-hand knowledge of the facts, and therefore such statistics as are set out in such weekly publication relative to facts which are susceptible of correct ascertainment are substantially true and correct.

Deponent further says that the figures and statistics appearing in the Weekly Statistical Sugar Trade Journal of the issue of

January 11, 1923, on page 13, under the heading "Recapitulation," are substantially true and correct.

Deponent further states that the facts and figures appearing in the Weekly Statistical Sugar Trade Journal in the issue of April 12, 1923, at page 186, under the heading "Cuban production, in tons," are substantially true and correct, although partially estimated.

Deponent further states that the figures and statistics appearing in the Weekly Statistical Sugar Trade Journal in the issue of

February 8, 1923, at page 80, in the issue of March 8, 1923, 282 at page 128, and in the issue of April 12, 1923, at page 198, under the heading of "Stocks in all United States refining ports and in all Cuban shipping ports at latest uneven dates, in tons," are substantially true and correct.

Deponent further states that the prices and quotations appearing under the head of "Refined sugar quotations," on the first page of the issues of February 1, 1923; February 8, 1923; February 15, 1923; March 15, 1923; March 22, 1923; March 29, 1923; April 5, 1923; and April 12, 1923, are true and correct quotations of the prices made by refiners of sugar as there stated.

Deponent further states that he is familiar with the market conditions obtaining in the actual purchase and sale of raw and refined sugar in the United States; that the said New York Coffee & Sugar Exchange (Inc.) (hereinafter designated as the exchange) has its place of business and operates at 113-117 Pearl Street, New

283 York City, State of New York, and that the said New York Coffee & Sugar Clearing Association (Inc.) (hereinafter

designated as the clearing association) has its place of business and operates at the same address; that the said exchange at the above-given location maintains and operates on all business days a trade exchange, with several hundred members, who engage on said exchange in trading primarily in future transactions in both raw and refined sugar, but that the transactions in the purchase and sale of refined sugar are inconsequential as compared with the transactions in raw sugar; that the operations and transactions so carried on on the floor of the said exchange substantially influence and regulate the prices of raw sugar in actual transactions involving the sale and delivery of raw sugar.

Deponent further states, based on information from reliable sources, that beginning about February first, 1923, the transactions in the purchase and sale of contracts for future delivery of raw sugar greatly increased on the floor of the said exchange, and the speculation in such contracts became very good and the prices made

284 and quoted on the floor of said exchange for such contracts were greatly enhanced, and at the same time the prices obtain-

ing in actual transactions in the purchase and sale of raw and refined sugar were correspondingly enhanced, although as of that time there was no existing shortage of supply of either raw or refined sugar available for use on the markets of the United States; that the prices since that time established both on the floor of the exchange

and in the actual transactions in the sale and purchase of raw sugar have been largely the immediate and direct result of the tremendous speculative operations taking place on the floor of the said exchange.

Deponent further states that, based upon accurate information as to present available supplies of raw sugar, both on the island of Cuba and in the United States, there is no existing shortage of raw sugar for sale on the markets of the United States, nor is there any existing shortage of refined sugar for sale on such markets, nor is there any reasonable expectation in the near future of any shortage of the supply of raw sugar available for sale in actual transactions taking place on the markets of the United States.

285 Deponent further states that prior to the year 1914 the said exchange did not carry on transactions in the purchase and sale of sugar, and that such transactions were abandoned for the period from 1917 to 1920, inclusive; that in 1920, trading in sugar was resumed on this exchange, and that therefore except for the period of three years subsequent to 1914, and for the period since 1920, the business of buying and selling raw sugar in the United States had been successfully carried on without the aid or interposition of either the said exchange or the said clearing association.

Deponent further states that the price of raw sugar made and established on the floor of the said exchange by transactions in "futures" are transmitted by wire to various markets of the world and to various markets of the United States, and are published in the press of the United States, and of many foreign countries; and

286 that the prices thus established and published are taken by those who own and sell sugar, and those who purchase sugar in actual transactions as the basis for prices in such actual transactions.

This affidavit is to be used on behalf of the United States in the above-styled cause. All interlineations and filling in of blank spaces herein are in the handwriting of the deponent.

WM. W. GARDINER.

Subscribed and sworn to before me this 30th day of April, 1923.

ANNA FALANS,

Notary Public, N. Y. Co.

Term expires March 30, 1925.

N. Y. Co. clerk's No. 3.

N. Y. register's No. 5051.

287 In the United States District Court for the Southern District of New York.

Affidavit of Walter Lewis.

STATE OF NEW YORK,

County of New York, ss:

WALTER LEWIS, being duly sworn, deposes and says:

That he is and has been for some years an expert accountant in the employ of the Government of the United States; and that in such capacity he has had access to and has examined sworn reports

made by the secretary of the New York Coffee & Sugar Clearing Association (Inc.) to the Internal Revenue Bureau of the United States containing statements showing the monthly summary of all the purchases and sales of raw sugar purported to have been made by the members of the New York Coffee & Sugar Exchange (Inc.) for the period from February 16, 1920, to March 31, 1923, both dates inclusive; and that such reports so made show that the membership of the New York Coffee and Sugar Exchange (Inc.) dealt in the following quantities of raw sugar in the following months.

Year.	Month.	Contracts bought and sold, C. H. & ex-Cl. house combined.
1920	Jan.	
	Feb.	75
	Mar.	276
	Apr.	827
	May.	1,101
	June.	871 3,150
	July.	634
	Aug.	963
	Sept.	735
	Oct.	1,427
	Nov.	1,567
	Dec.	1,085 7,401
1921	Jan.	1,335
	Feb.	1,917
	Mar.	1,356
	Apr.	2,312
	May.	1,820
	June.	1,867 10,007
	July.	1,862
	Aug.	1,863
	Sept.	2,010
	Oct.	1,102
	Nov.	1,833
	Dec.	2,234 10,394
1922	Jan.	4,535
	Feb.	5,699
	Mar.	7,968
	Apr.	7,254
	May.	5,647
	June.	15,592 46,695
	July.	15,724
	Aug.	18,861
	Sept.	12,747
	Oct.	10,587
	Nov.	9,162
	Dec.	6,229 73,310
1923	Jan.	7,457
	Feb.	32,038
	Mar.	19,412 58,937

289 Deponent further states that he has had access to and has examined the figures and statistics contained in the Weekly Statistical Sugar Trade Journal, a trade publication issued weekly by Willett & Gray of 82 Wall Street, New York, for the period from January 1st, 1923, to April 12, 1923, particularly under the heading of "Stocks in all United States refining ports and in all Cuban shipping ports at the latest uneven dates in tons," the issue of February 8, 1923, at page 80, the issue of March 8th, 1923, at page 128, and the issue of April 12, 1923, at page 198; and that the said issues show the available stock of raw sugar on hand in the United States and in Cuba as reported on uneven dates within the last preceding week, to have been:

	Tons
Issue of February 8, 1923	541,007
Issue of March 8, 1923	872,371
Issue of April 12, 1923	1,326,911

Deponent further states that based upon an examination of the aforesaid sworn reports made by the secretary of the New York Coffee and Sugar Clearing Association (Inc.), it appears that only a negligible part of the raw sugar contracted to be sold and purchased on the floor of the New York Coffee and Sugar Exchange (Inc.) was ever delivered in fulfillment of such contracts, and that the actual deliveries were as follows:

In November, 1922, only 18/100 of one per cent.

In December, 1922, only 23/100 of one per cent.

In January, 1923, only 10/100 of one per cent.

In February, 1923, only 2/100 of one per cent.

In March, 1923, only 10/100 of one per cent.

200 Deponent further states that he has had access to and has examined certain daily market reports issued every business day by the said New York Coffee and Sugar Exchange (Inc.), showing the prices for raw sugar exclusive of cost, insurance, and freight, made and established by the transactions on that said exchange from February 1st, 1923, down to the present time, and that the price of raw sugar so made has increased from 3.65 per cwt. for May delivery on February 1st, 1923, to 6.30 per cwt. for May delivery on April 18, 1923.

Deponent further states that from such daily market reports he prepared the tabulation of prices appearing on page 18 of the petition of this cause, and that the prices for raw sugar appearing in such tabulation are true and correct as based upon such daily market reports.

Copies of all such daily market reports as issued by the New York Coffee and Sugar Exchange (Inc.) from February 1st, 1923, to April 25, 1923, are hereto attached and made a part of this affidavit.

Deponent further states that based upon the figures and statistics appearing in the issue of the Weekly Statistical Trade Journal of January 11, 1923, at page 15, that the tabulation appearing on page

10 of the petition in this cause showing the sources of sugar consumed in the United States in 1920, 1921, and 1922 is true and correct. That based upon the figures and statistics contained in said tabulation at page 10 there was in the year 1922 a per capita consumption in the United States of about 102.86 pounds and that every advance of one cent per pound in the price of refined sugar costs the consumers in the United States approximately \$2,000,000 a week.

291 Deponent further states that the tabulation appearing on page 16 of the petition in this cause showing the situation in Cuba as of April 7, 1923, with respect to stocks on hand as of April 7, 1923, is a true and correct transcript of such facts and statistics as they appear in the issue of the Weekly Statistical Sugar Trade Journal of April 12, 1923, at page 186.

Deponent further says that the figures and statistics contained in the tabulation appearing on page 17 of this petition showing stocks on hand at all United States refining ports are true and correct based upon information appearing in the issue of the Weekly Statistical Sugar Trade Journal of April 12, 1923, at page 198.

Deponent further states that based upon statistics and quotations appearing in the said Weekly Statistical Sugar Trade Journal, on the first page of the issues of February 1, 1923; February 8, 1923; February 15, 1923; March 15, 1923; March 22, 1923; March 29, 1923; April 5, 1923; and April 12, 1923, the figures set forth in the tabulation on page 19 of the petition in this cause showing refined sugar quotations, barrels or 100-pound bags, f. o. b. New York, are true and correct.

Deponent further states that the figures and statistics contained in the tabulation appearing on page 21 of the petition in this cause are true and correct, based upon an examination of and figures taken from the aforesaid sworn reports of the secretary of the New York Coffee and Sugar Clearing Association (Inc.) to the Internal Revenue Bureau of the United States.

292 Deponent further states that he has received directly from forty (40) broker members of defendant, New York Coffee and Sugar Exchange (Inc.), statements taken from their books of original entry showing all their transactions in buying and selling contracts in raw sugar for the month of February, 1923, and indicating in part the classes of customers for whose account such trading was carried on on the floor of the said exchange, and the transactions of these brokers so reporting for such period represent 20,576 lots of fifty (50) tons each bought and 21,033 of such lots of raw sugar sold, and these transactions so carried on by such brokers represent approximately 65 per cent of all transactions in buying and selling raw sugar carried on on the floor of such exchange during said period of time.

An analysis of such reports so made to the deponent by the said brokers as to the classes of customers for whose accounts such trans-

actions in buying and selling were carried on shows the following facts:

Distribution of totals reported above.

Lets bought.

2,870	Sugar planters	4,394
175	" dealers	104
5,747	" brokers	5,350
1,556	Stock exchange brokers & customers	1,315
3,569	Individual	3,179
5,497	Unknown (a/c reported by number only)	5,381
1,109	Foreign (Eng., France, Ger., Cuba, Can., Spain)	1,440
20,576		21,086

293 This affidavit is intended for use on behalf of the United States in the above entitled cause, and all interlineations and filling in of blank spaces herein are in the hand of deponent.

WALTER LEWIS.

Subscribed and sworn to before me this 30 day of April, 1923.

[SEAL]

ANNA FAIANS,

Notary Public, N. Y. Co.

Term expires March 30, 1925.

N. Y. Co. clerk's No. 3.

N. Y. register's No. 5051.

294 United States District Court, Southern District of New York.

[Title omitted.]

Affidavit of D. A. L'Esperance.

STATE OF NEW YORK,

County of New York, ss:

DAVID A. L'ESPERANCE, being duly sworn, deposes and says:

That he is special assistant to the Attorney General of the United States at New York City, New York.

That in such capacity, on or about March 29th, 1923, he received from Frank C. Russell, secretary of defendant New York Coffee and Sugar Exchange (Inc.), a certain booklet entitled "List of Members of New York Coffee and Sugar Exchange, Incorporated and Co-Partners," as containing a then list of the officers, board of managers, committees, and members of the said New York Coffee and Sugar Exchange (Inc.), corrected to date, which said booklet is herewith filed and made a part of this affidavit.

Deponent further states that in such capacity, on or about April 4, 1923, he received from John A. S. Dunn, secretary and treasurer of defendant New York Coffee and Sugar Clearing Association (Inc.), a typewritten list of the members of that corporation as of that date, which said list is herewith filed and made a part of this affidavit.

295 Deponent further states that on or about the 14th day of April, 1923, John A. S. Dunn, secretary and treasurer of defendant New York Coffee and Sugar Clearing Association (Inc.), orally stated to him the names and terms of officers and directors of that corporation, and that the typewritten memorandum hereto attached and made a part of this affidavit correctly states such information as then furnished by the said Dunn.

Deponent further states that on or about April 11th, 1923, at the place of business of defendant, the New York Coffee and Sugar Exchange (Inc.), Charles B. Stroud, superintendent of the said New York Coffee and Sugar Exchange (Inc.), in the course of an official interview as to the organization, functions, and effect of the said New York Coffee and Sugar Exchange (Inc.), stated:

"The transactions on this exchange every day fix the price of sugar for the entire world, the refiners do not make a move until this exchange opens in the morning."

Deponent further states that on April 19, 1923, within thirty minutes after the filing of the petition in this cause by the United States, a member of the defendant, New York Coffee and Sugar Exchange (Inc.), called the deponent over the telephone at his office in the old post-office building, and stated as follows:

"News has just come in over the ticker from Washington that the Government has filed a bill against the exchange. Is that true? Hell is being raised down here and a near panic is on on the floor of the exchange. Margins are being called. The market has dropped off seventy-five (75) points from the opening."

This affidavit is made for use in behalf of the United States in the above-entitled cause.

296 All interlineations and filling in of blanks is in the handwriting of the defendant.

DAVID A. L'ESPERANCE

Subscribed and sworn to before me this 30 day of April, 1923.

[SEAL]

ANNA FAIANS,

Notary Public, N. Y. Co.

Term expires March 30, 1925.

N. Y. Co. clerk's No. 3.

N. Y. register's No. 5051.

297 Officers: Franklin W. Hopkins, president; August Schierenburg, vice president; John A. S. Dunn, secretary and treasurer; Hugh S. Carney, assistant treasurer.

Directors: William Bayne, term expires 1926; Edward F. Diercks, term expires 1925; Leon Israel, term expires 1926; Arthur H. Lam-born, term expires 1924; Levis W. Minford, term expires 1924; August Schierenburg, term expires 1925; Franklin W. Hopkins, term expires 1926.

298-299 [File endorsement omitted.]

800 Clearing numbers, New York Coffee and Sugar Clearing Association (Inc.), 66 Beaver Street, New York:

- | | |
|------------------------------|-----------------------------------|
| 1. Arnold, Dorr & Co. | 34. Lehman Bros. |
| 2. Aron, J., & Co. | 35. Livingston & Co. |
| 3. Bache, J. S., & Co. | 36. Logan & Bryan. |
| 4. Bayne, Wm., & Co. | 37. McDonnell & Co. |
| 5. Brown, David & Co. | 38. McFadden, Geo. H., & Bro. |
| 6. Brown, T. Barbour & Co. | 39. Mayer, M. R. |
| 7. Chapin, S. B., & Co. | 40. Meinrath & Co. |
| 8. Clark, Childs & Co. | 41. Miller & Co. |
| 9. Clark, Jno. F., & Co. | 42. Minford, Lueder & Co. |
| 10. Clews, Henry & Co. | 43. Newman Bros. & Worma |
| 11. Corn, Schwarz & Co. | 44. Norden, A., & Co. |
| 12. Craif, W. R., & Co. | 45. Nortz & Co. |
| 13. Farr & Co. | 46. Orvis Bros. & Co. |
| 14. Fenner & Beane. | 47. Post & Flagg. |
| 15. Finlay, G. H., & Co. | 48. Pynchon & Co. |
| 16. Fromm & Co. | 49. Revere, C. T. |
| 17. Gruner, Siegr., & Co. | 50. Ruffner, McDowell & Burch. |
| 18. Gwathmey & Co. | 51. Schaefer, J. Louis. |
| 19. Halle & Stieglitz. | 52. Schenbrunn, S. A., & Co. |
| 20. Harris, Winthrop & Co. | 53. Seitz, Louis. |
| 21. Hayden, Stone & Co. | 54. Shearson, Hammill & Co. |
| 22. Hentz, H., & Co. | 55. Siedenburgh, Rhd. & Co. |
| 23. Hess & Hamilton. | 56. Sorrells & Co. |
| 24. Hopkins Bros. | 57. Springs & Co |
| 25. Housman, A. A., & Co. | 58. Steinwender, Stoffregen & Co. |
| 26. Hubbard Bros. & Co. | 59. Stewart, Robert J. |
| 27. Hudson, C. I., & Co. | 60. Sutro Bros. & Co. |
| 28. Israel, A. C., & Co. | 61. Tameling, Keen & Co. |
| 29. Israel, Leon & Bros. | 62. Thomson & McKinnon. |
| 30. Jay, J. W., & Co. | 63. Walter, Chas. J. |
| 31. Jenks, Gwynne & Co. | 64. White, E. H., jr. |
| 32. Lamborn, Hutchings & Co. | 65. Williams, Russell & Co. |
| 33. Lawrence, Geo. W., & Co. | 66. Wollman, W. J., & Co. |

306 United States District Court, Southern District of New York.

[Title omitted.]

Affidavit of Wm. R. Benham.

STATE OF NEW YORK,
County of New York, ss:

WILLIAM R. BENHAM, being duly sworn, deposes and says:

That as a representative of the Department of Justice of the United States he received on or about April 23, 1923, from Charles B. Stroud, superintendent of the New York Coffee and Sugar Exchange (Inc.), the printed copy of the by-laws and rules of

that corporation, which is hereto attached and made a part of this affidavit, as a true and correct copy of such by-laws and rules.

Deponent further states that on or about April 23, 1923, he received from John A. S. Dunn, secretary and treasurer of the New York Coffee and Sugar Clearing Association (Inc.), the printed copy of the certificate of incorporation, by-laws, and rules of the said New York Coffee and Sugar Clearing Association (Inc.), which is hereto attached and made a part of this affidavit, as a true and correct copy of the same.

Deponent further states that on or about April 26, 1923, he received from Charles B. Stroud, superintendent of the New York Coffee and Sugar Exchange (Inc.), copies of the daily market reports which are issued by that exchange for the period from February 1st, 1923, to April 25, 1923, which said copies are attached to and made a part of the affidavit of Walter Lewis, Esq., filed in the above entitled cause.

Deponent further states that on or about April 24, 1923, he received from ——— Way, assistant treasurer of Lamborn & Co., a corporation, whose principal place of business is at 132 Front Street, New York City, State of New York, a copy of a certain booklet entitled "Modern Methods of Marketing Cuban Raw Sugar," published and circulated by that said corporation to his customers and other interested parties, which said copy is herewith attached and made a part of this affidavit.

Deponent further states that the said New York Coffee and Sugar Exchange (Inc.), defendant in the above styled equity cause, at the present time maintains and operates a sugar trading exchange at 113-117 Pearl Street, New York City, in the State of New York, upon which on all business days the members of said exchange engage in the purchase and sale of contracts for raw sugar.

Deponent further states that the said New York Coffee and Sugar Clearing Association (Inc.), a defendant in the above entitled cause, maintains and operates a place of business at 113-117 Pearl Street, New York City, in the State of New York, for the purpose of clearing transactions taking place between members of the said New York Coffee and Sugar Exchange (Inc.) and other purposes of this corporation relating to the purchase and sale of sugar and certain other commodities.

This affidavit is to be used on behalf of the United States in the above-entitled cause.

WILLIAM R. BENHAM.

Subscribed and sworn to before me this 30 day of April, 1923.

[SEAL.]

ANNA FAIANS,

Notary Public, N. Y. Co.

Term expires March 30, 1925.

N. Y. Co. clerk's No. 3.

N. Y. register's No. 5051.

309 Stipulation by counsel for each party that affidavits be treated as taken on final hearing.

In the District Court of the United States for the Southern District of New York.

[Title omitted.]

Stipulation.

It is hereby stipulated and agreed by and between counsel for the respective parties that this cause proceed to final hearing on the merits upon the verified pleadings and affidavits heretofore filed upon the application for a preliminary injunction herein and without further proof or argument.

Dated New York, May 12th, 1923.

WM. HAYWARD,

United States Attorney.

VAN VORST, MARSHALL & SMITH,

Solicitors for Defendants.

310 In the District Court of the United States for the Southern District of New York.

[Title omitted.]

Final decree.

This cause came on to be heard at this term and was argued by counsel, and it having been stipulated by counsel on each side that the affidavits presented on the application for a preliminary injunction should be treated as though taken on final hearing, thereupon, upon consideration thereof,

It is ordered, adjudged, and decreed that the petition in this cause be dismissed.

HENRY WADE ROGERS,

MARTIN MANTON,

JULIUS M. MAYER,

United States Circuit Judges,

Sitting as District Judges.

Dated, May 15, 1923.

311 United States District Court for the Southern District of New York.

Petition for appeal by United States.

(Filed May 15th, 1923.)

Before Rogers, Manton, Mayer, judges of the Circuit Court of Appeals, sitting in the District Court.

THE UNITED STATES OF AMERICA, PETITIONER,

against

NEW YORK COFFEE & SUGAR EXCHANGE (INC.) AND OTHERS.

The United States of America, feeling itself aggrieved by the final decree entered in the above entitled cause on the 15th day of May,

1923, by its counsel, comes into open court and prays an appeal to the present term of the Supreme Court of the United States from all of said decree.

The particulars wherein the United States of America considers said decree erroneous are set forth in the assignment of errors herewith filed, to which reference is made.

312 And the United States further prays that a transcript of the record, proceedings, and papers on which the decree was made and entered, duly authenticated, may be transmitted forthwith to the Supreme Court of the United States.

May 15, 1923.

WM. HAYWOOD,
United States Attorney
For the Southern District of New York.

Allowed:

HENRY WADE ROGERS,
MARTIN MANTON,
JULIUS M. MAYER,
United States Circuit Judges
Sitting as District Judges.

313 In the District Court of the United States for the Southern District of New York.

Assignment of errors by the United States.

(Filed May 15th, 1923.)

Before Rogers, Manton, Mayer, judges of the Circuit Court of Appeals, sitting as District Judges.

[Title omitted.]

Comes now the United States of America by counsel and in connection with its application for appeal presents in open court the following assignment of errors on which it will rely upon said appeal to the Supreme Court of the United States from the final decree pronounced on this the 15th day of May, 1923, in the above entitled cause.

The court erred:

I.

In refusing to adjudge and decree that the by-laws, rules, and regulations of the defendant corporations, in so far as they
314 relate to sugar, their adoption by said corporations and individual defendants, and the concerted action of defendants in carrying out said rules and regulations, constitute a combination and conspiracy in restraint of interstate and foreign trade and commerce in raw and refined sugar in violation of the act of July 2, 1890, known as the Sherman Antitrust Act, and also in violation of section 73 of the act of August 27, 1894, as amended by the act of February 12, 1913, known as the Wilson Tariff Act.

II.

In not perpetually enjoining the defendants and each of them from the further operation of the New York Coffee & Sugar Exchange (Inc.) and New York Coffee and Sugar Clearing Association (Inc.) in so far as sugar is dealt in on said exchange and association as described in the petition, and from engaging in the operation of any plan or scheme of like character or designed for a like purpose.

III.

In not adjudging and decreeing that the adoption of the by-laws, rules, and regulations of the defendants, New York Coffee and Sugar Exchange (Inc.) and New York Coffee and Sugar Clearing Association (Inc.), which are designed to promote transactions in sugar of the character herein described, and the acquiescence in said
 315 by-laws, rules, and regulations by the members of said exchange and association, and the concerted action of said members under the same whereby transactions unlimited in number are made upon said exchange and cleared through said clearing association purely speculative in character and in which the seller does not own or expect or intend to acquire sugar for actual delivery or the purchaser does not have any present or future need for sugar or intend or expect to accept an actual delivery of sugar, constitute a combination in restraint of interstate and foreign commerce in violation of said antitrust act of July 2, 1890, and of said section 73 of said Wilson Tariff Act of August 27, 1894, as amended by the act of February 12, 1913.

IV.

In not perpetually enjoining defendants from further permitting transactions upon said exchange in which the seller does not own or expect or intend to acquire sugar for actual delivery, and transactions in which the purchaser has no present or future need for sugar and does not intend or expect to accept an actual delivery of sugar, and all other transactions of a speculative character.

V.

In not perpetually enjoining defendants from engaging in transactions wherein great speculations are brought about and great
 316 price fluctuations are induced and whereby artificial prices of sugar are created or prices are affected by artificial means and without regard to the economic law of supply and demand as specifically prayed for in the petition.

VI.

In not enjoining the defendants from continuing to operate said exchange and said clearing association as amounting to and con-

stituting public nuisances and abuses, which are to the detriment and hurt of the people of the United States, and in derogation of their common right.

VII.

In dismissing the petition and not granting the relief prayed for therein.

Wherefore the United States prays a reversal of said decretal order, and the entry of a decree granting the relief prayed for in the original petition in this cause.

May 15th, 1923.

WM. HAYWARD,
*United States Attorney
for Southern District of New York.*

317 In the United States District Court for the Southern District of New York.

Order allowing appeal to the United States.

(Filed May 15th, 1923.)

Before Rogers, Hough, Manton, and Mayer, judges of the Circuit Court of Appeals, sitting as district judges.

[Title omitted.]

Be it remembered: That in the above cause on this the 15th day of May, 1923, the United States of America, appearing by counsel in open court (counsel for all defendants being present), presented and caused to be filed its petition praying an appeal to the Supreme Court of the United States from all of the final decree this day entered therein, and at the same time presented and caused to be filed its assignment of errors, all as required by the statutes and rules of court.

On consideration thereof the court ordered and decreed that the appeal be allowed as prayed; and the clerk was directed to transmit forthwith a properly authenticated transcript of the record, papers, and proceedings to the Supreme Court of the United States.

May 15th, 1923.

HENRY WADE ROGERS,
MARTIN MANTON,
JULIUS M. MAYER,
United States Circuit Judges, Sitting as District Judges.

318 By the honorable Henry Wade Rogers, one of the United States circuit judges for the Southern District of New York, in the second circuit, sitting in the District Court.

Citation on appeal and service.

To New York Coffee and Sugar Exchange (Inc.), New York Coffee and Sugar Clearing Association (Inc.), T. S. B. Nielsen, Manuel E. Rienda, Frank C. Russell, C. H. Middendorf, J. H. Walter Lenkau, Justus Ruperti, Louis V. Sterling, William S. Scott, C. H. Stoffregen, August Schierenberg, B. B. Peabody, E. L. Lueder, G. H. Finlay, Franklin W. Hopkins, John H. Windels, C. B. Stroud, John A. S. Dunn, Hugh S. Carney, William Bayne, Edward F. Diercks, Leon Israel, Arthur H. Lamborn, Levis W. Minford, in their own right and as representatives of all the members of said New York Coffee and Sugar Exchange (Inc.) and New York Coffee and Sugar Clearing Association (Inc.):

You are hereby cited and admonished to be and appear before the Supreme Court of the United States, to be holden in the city of Washington, within the next thirty days, pursuant to a petition of appeal filed in the clerk's office of the District Court of the United States for the Southern District of New York, wherein the United States is petitioner and you are defendant to show cause, if any there be, why the decree entered in said cause mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Given under my hand at the Borough of Manhattan, in the city of New York, in the district and circuit above named, this 15th day of May, in the year of our Lord one thousand nine hundred and twenty-three, and of the independence of the United States the one hundred and forty-seventh.

HENRY WADE ROGERS,
*United States Circuit Judge for the
Southern District of New York, in the Second Circuit,
Sitting in the District Court.*

319-320 [File indorsement omitted.]

321 United States District Court, Southern District of New York.

[Title omitted.]

Stipulation as to transcript.

It is hereby stipulated that the transcript of the record of the above ~~cause~~ ^{cause}, as heard and decided in the above court, heretofore ~~made~~ ^{made}, is a true and correct transcript of such record, and

is to be so taken by all parties on the appeal of this cause to the Supreme Court of the United States.

Dated New York, May 15th, 1923.

WM. HAYWARD,

United States Attorney and Solicitor for the Petitioner.

VAN VORST, MARSHALL & SMITH,

Solicitors for all Corporate Defendants

and for all Individual Defendants.

322 [File endorsement omitted.]

323 UNITED STATES OF AMERICA,
Southern District of New York, ss:

[Title omitted.]

Clerk's certificate.

I, Alexander Gilchrist, jr., clerk of the District Court of the United States of America for the Southern District of New York, do hereby certify that the foregoing is a correct transcript of the record of the said District Court in the above-entitled matter as agreed on by the parties.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the Southern District of New York, this 14th day of May, in the year of our Lord one thousand nine hundred and twenty-three and of the independence of the said United States the one hundred and forty-seventh.

[SEAL.]

ALEX. GILCHRIST, Jr.,

Clerk.

324 In the District Court of the United States for the
Southern District of New York.

[Title omitted.]

Stipulation to omit exhibits and as to printing records.

(Filed May 23, 1923.)

It is hereby stipulated between counsel in the above-entitled cause that the several exhibits of the various affidavits constituting the proof in this cause, viz: Reports of Massachusetts Commission on the Necessaries of Life; list of members of the New York Coffee and Sugar Exchange and copartnerships; Lamborn booklet entitled "Modern Methods of Marketing Cuban Raw Sugar"; charter, by-laws, and rules of the said exchange; by-laws and rules of the New York Coffee and Sugar Clearing Association and the list of its members; daily reports of said exchange, February 1 to April 25, 1923, both inclusive; Meinrath booklet entitled "An Outline of the

Opportunities, Advantages, and Manner of Operating in Refined Sugar Futures on the N. Y. Coffee & Sugar Exchange" shall be omitted in the printing of the record and that copies thereof for the use of the court shall be handed to the court and may be used by the court and counsel the same as though printed in full therein.

WM. HAYNARD,
Attorney for Petitioner.
VAN VORSH MARSHALL & SMITH,
Attorney for Defendants.

MAY 18, 1923.

328-329 [File endorsement omitted.]

[Indorsement on cover: File No. 29,623. S. New York D. C. U. S. Term No. 1073. The United States of America, appellant, v. New York Coffee and Sugar Exchange (Inc.), New York Coffee and Sugar Association (Inc.), T. S. B. Nielsen, et al. etc. Filed May 18, 1923. File No. 29,623.]

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In the Supreme Court of the United States.

OCTOBER TERM, 1923.

UNITED STATES OF AMERICA, APPELLANT,

v.

NEW YORK COFFEE AND SUGAR EXCHANGE (Inc.), New York Coffee and Sugar Clearing Association (Inc.), et al.

No. 331.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR THE UNITED STATES.

(All italics not otherwise indicated are ours.)

PLEADINGS.

THE PETITION.

This is an action brought under that provision of the Sherman Anti-Trust Act which makes it the duty of United States attorneys, acting under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain violations of the act. The parties defendant are the New York Coffee and Sugar Exchange (Inc.), a corporation organized under the laws of the State of New York; the New York Coffee and Sugar Clearing Association (Inc.), a corporation organized under the laws of the same

State; and the officers of these corporations, who are sued both as individuals and in their representative capacity, and all the other members thereof, who were made parties defendant, not by name, but through said corporations and their officers. The petition alleges a violation of both the first or conspiracy section of the Sherman Anti-Trust Act, and those provisions of the Wilson Act of February 12, 1913, which prohibit combinations in restraint of trade when an importer is a party thereto. And the object of the petition is to prevent defendants from further engaging in and carrying out a combination and conspiracy in restraint of interstate and foreign trade and commerce in raw and refined sugar. The petition states the sources from which the United States draws its supplies of sugar, and the quantities derived from each of these several sources for the years 1920, 1921, and 1922, and describes the operations on the Exchange. (R. pp. 12-17.) It is alleged that the volume of transactions relating to refined sugar are inconsequential as compared to the dealings relating to raw sugar; that such raw sugar as is actually delivered in consequence of transactions on the Exchange is stored in bonded warehouses licensed by the Exchange corporation; that actual transactions on the Exchange in an overwhelming majority of instances do not involve, and are not intended to involve, the delivery of the amount of raw sugar purported to be sold thereby; that such transactions are completed by matching, ring settlements, or payments of differences, and by

clearing through the Clearing Association where settlements are reached by matching, payments of differences, etc.; that on an average about 75 per cent of all transactions are settled through the Clearing Association; that of the total number of contracts cleared through the Association in November, 1922, $\frac{18}{100}$ of 1 per cent were consummated by delivery; of the total number of contracts cleared in December, 1922, $\frac{23}{100}$ of 1 per cent were so consummated; of the contracts of January, 1922, $\frac{10}{100}$ of 1 per cent, and of February, 1923, $\frac{2}{100}$ of 1 per cent, and of March, 1923, $\frac{1}{100}$ of 1 per cent were so consummated; that by reason of the large number of firms and corporations with which its members are connected, or which transact their business in accordance with the rules of the Exchange, it has become the largest commercial center for transactions relating to sugar in the world; that while but little sugar is actually delivered in settlement of the numerous transactions on the Exchange, yet such transactions are regarded as binding obligations and as establishing the price of sugar for the day for the date of delivery; and the fluctuations of prices are carefully tabulated and immediately transmitted by wire to all the markets of the world, and are published in the press of the United States and of many foreign countries, and the prices thus established and published are taken by those who own and sell sugar and those who purchase sugar as the basis for prices in actual transactions; and thus by their speculations and gambling in sugar futures defendants control the prices which the

refiner pays for raw sugar, and also the prices which dealers and consumers pay for refined sugar; that the prices thus fixed are established upon a wholly speculative and artificial basis, without proper regard to the conditions which, but for said unlawful and uneconomic operations, would control said prices; and that said Exchange and Clearing Association serve no legitimate or useful purpose in the marketing in interstate and foreign commerce of raw and refined sugar, but serve only as a means of contracting and speculating with reference to supplies of sugar that in many instances do not exist, which is done for the purpose of manipulating the prices of raw and refined sugar without regard to conditions actually obtaining in the industry, and regardless of the law of supply and demand, and solely for illegitimate gambling or speculative profits. (R. pp. 12-16.)

There is then given statistics taken from recognized authorities showing the supply and estimated supply of sugar for 1920-21, 1921-22, and 1922-23, and the relative production of sugar in Cuba for 1921-22 and the estimated production for 1922-23, and the stocks on hand in the several ports of the United States on April 7-11, 1922 and 1923; and it is alleged that there is no economic justification for a sudden or appreciable increase in the prices of raw or refined sugar. (R. pp. 14-19.) A table is then given showing the prices of raw sugar for March, May, July, and September deliveries, 1923; from February 1 to April 16, 1923; and also a table showing quotations of refined sugar by five refineries

situated in New York on February 1, 8, 15, March 15, 27, 29, and April 5 and 12, 1923; and it is then alleged that the rapid increases there shown in the prices of sugar were the direct result of a combination and conspiracy between the two corporations mentioned and the officers and members of those corporations and their clients or principals, who, by means of reported purchases and sales of sugar, sought to and did establish artificial and unwarranted prices not governed by the law of supply and demand, but based wholly on speculative dealings, not involving the delivery of the quantities of sugar represented thereby, but carried on for the purpose and with the effect of unduly enhancing the prices of sugar. (R. pp. 19-21.) It is further alleged that since February 7, 1923, there has been an orgy of speculation in raw sugar through the instrumentality of the Exchange and the Clearing Association; that enormous quantities of raw sugar, greatly in excess of the quantities customarily dealt in and more than the total stocks of raw sugar then in existence, have been the subject of fictitious or paper sales; that the transactions on the Exchange during February, 1923, though a short month with two holidays, aggregated 1,515,050 tons, as compared with 362,850 tons in January, while during February only 300 tons were actually delivered as the result of transactions on the Exchange; and that during March, 1923, transactions purporting to involve the purchase and sale of raw sugar were had on the Exchange to the extent of 937,900 tons, while de-

liveries amounted to only 1,250 tons. (R. p. 22.) Also a table is given showing for the months of November and December, 1922, and January, February, and March, 1923, the number of contracts made, open contracts from the previous month, contracts cleared through the Clearing Association, those upon which actual deliveries were made, and the contracts matched; and it is alleged that as the result of these fictitious or paper transactions the prices of raw sugar and also of refined sugar have been increased on an average of considerably more than \$2.00 per hundredweight; and that the speculative operations described, and which were carried on with a common understanding and for the purpose and with the intent of unduly enhancing the prices of both raw and refined sugar, and which had accomplished that object, constitute and are an unlawful combination and conspiracy in restraint of interstate and foreign trade and commerce in raw and refined sugar, and have resulted, and will continue to result unless restrained by the court, in the continued enhancement of the prices of raw and refined sugar, and also in a diminished demand therefor, thereby lessening the traffic therein in interstate and foreign commerce. (R. pp. 23-25.) And it is prayed that it be adjudged and decreed that the by-laws, rules, and regulations of the defendant corporations, in so far as they relate to sugar, their adoption by said corporations and individual defendants, and the concerted action of said defendants in carrying out said rules and regulations,

constitute a combination and conspiracy in restraint of interstate and foreign trade and commerce in raw and refined sugar in violation of the Act of Congress of July 2, 1890, known as the Sherman Anti-Trust Law, and also of Section 73 of the Act of August 27, 1894, as amended by the Act of February 12, 1913, known as the Wilson Tariff Act, contrary to public policy and detrimental to the people of the United States and in derogation of their common right; and that defendants be perpetually enjoined from maintaining and operating, and from engaging in the operation of, the Exchange and Clearing Association in so far as they deal or purport to deal in sugar; from establishing, maintaining, operating, or engaging in the operation of any plan or scheme of like character, or designed, or intended to establish artificial prices of sugar, or to substantially affect the prices of sugar by artificial means, or the necessary result of which would be to so establish and affect the prices of sugar; that the defendants be enjoined from publishing or making public any price or prices of raw or refined sugar as being or purporting to be the market price of sugar as established by or observed in the transactions on the Exchange; and from attempting to establish the prices named in the transactions on said Exchange as the market prices of sugar to be observed in bona fide transactions actually involving the purchase, sale, and delivery of sugar; and that they be also enjoined from entering into or permitting to be entered into any transactions on the Exchange or elsewhere involving or

purporting to involve the purchase, sale, and delivery of sugar, unless the person purporting to make such sale has in his possession or under his control a supply of sugar adequate to meet the requirements of such transaction, and the person purchasing or purporting to purchase shall in good faith intend to buy and pay for such sugar and accept delivery thereof as soon as same can be made. (R. pp. 25-28.)

ANSWER.

The answer admits the organization of both corporations, but corrects some errors made in the petition with reference to the parties who are officers of and control said corporations. (R. pp. 34-35.) With reference to operations upon the Exchange and through the Clearing Association the answer contains the following important statements and admissions:

It designates two classes of transactions engaged in by the members *which are not made upon the Exchange*. Both of these classes consist of actual sales of sugar. It then describes the third class of transactions, *which are made upon the Exchange*. It says that many of the members, either in person or as brokers or agents, make with other members of the Exchange purchases and sales of coffee and sugar for future delivery, said contracts providing that the seller shall deliver in New York the coffee or sugar covered by the contract upon any date of the named month that he shall select; "*that the entire trading in said exchange room consists of making or*

transferring contracts for future delivery"; that all orders received by members to buy or sell must be executed in the open market under the Exchange rules and only during the hours for regular trading, and both the buyers and sellers are personally present in the city of New York when the contracts are made; that many of the members of the Exchange are bankers, refiners, producers, users, and manufacturers of sugar, etc., who find it to their business advantage to be members of the Exchange, but who are not active on the floor thereof, and many more of the members act only as agents and receive from others on consignment shipments of coffee and sugar to be sold by them as agents, *which they protect by future contracts on the Exchange*; and others of said members act only as agents or brokers in the making of future contracts with other members of the Exchange; and that all contracts for future delivery provide for the delivery of negotiable warehouse receipts which represent the actual commodity and are of only such warehouses as are approved and licensed by the Exchange. (R. pp. 38, 39.)

In describing more particularly the transactions upon the Exchange the answer says that in trading for future delivery in the exchange room during every year many millions of tons of sugar are bought and sold for future delivery, "*and as respects upwards of three-fourths of the sugar covered thereby, said contracts are fulfilled and settled without any delivery of any warehouse receipts, but are settled by off-sets or clearances through the Clearing Association, and*

the payment of differences in market price, or they may be settled by so-called "ring" settlements, which are provided for by the rules of said Exchange and that practically (all) said remaining future contracts are performed or completed during the months specified for delivery, by delivery by sellers to buyers of said warehouse receipts." (R. p. 40.) It is further alleged that a large part of the total volume of trading in sugar for future delivery in the exchange room as above described consists of contracts made by producers of sugar, refiners, merchants, and other consumers, "who make such contracts entirely for the purpose of insuring themselves against price fluctuations, respecting sugar either owned, sold, or purchased by them, for the purpose of merchandising or shipping to consuming markets or refining, or using in manufactured products in which sugar is used, and that in most cases such contracts for future delivery are fulfilled by the making of counter contracts to offset the ones originally made; the actual sugar which such future contracts were based upon being sold or disposed of to refiners or others. That another large part of said future trading in said exchange room consists of contracts made by or for so-called speculators, persons who have capital and make a study of trade conditions affecting prices, and endeavor to forecast the future prices of sugar and profit thereby, through the making of such contracts for future delivery"; that the Exchange for the information of its members and their customers gather information from all parts of the world in regard to crops and visible supply of sugar

and current prices prevailing in different sugar markets of the world; "*that a very large proportion of all the world's trading in sugar for future delivery takes place in the exchange room of the Exchange,*" but that an exchange is also maintained in New Orleans, and formerly exchanges were maintained at London, Paris, and Hamburg. (R. pp. 40, 41.)

It is also alleged that the rules of the Exchange limit the variation on any day of the price of sugar futures for any month to 1 cent per pound in the price, and the board of managers are given the power to suspend trading whenever such conditions arise that in their judgment the best interests of the Exchange will be thereby promoted, and it is asserted that the purchase and sale of sugar for future delivery upon the Exchange is a distinct benefit to all producers and consumers and those engaged in commerce in sugar and to the public in general "in that it enables carriers of sugar to protect themselves against price fluctuations by the making of 'hedging' contracts upon such Exchange"; and it is further declared that the prices prevailing in future trading at any time are the expression of the preponderance of opinion amongst interested traders as to the future course of the prices of sugar, and that they ordinarily express the normal operation of the natural law of supply and demand; and that the trading in futures in the exchange room and the operations of the Exchange "are substantially similar to those of exchanges dealing in other commodities, such as the Board of Trade of the City of Chicago, dealing in

grain; the New York Cotton Exchange, dealing in cotton; the New York Produce Exchange, dealing in grain and other produce; and that all of said exchanges, as well as this defendant, perform a great and important economic function in connection with the distribution of the products in which they deal." (R. pp. 42, 43.)

With reference to the functions of the Clearing Association, it is alleged that it "does not make any purchases or sales of coffee or sugar, and that it does not deal in coffee or sugar except as an agency in clearing contracts of members of the said Exchange and of the said Clearing Association, *and that its clearance of said contracts is simply an offsetting of contracts of certain members against the contracts of certain other members, and guarantees of performance, and that in such respect it constitutes a mere convenience, avoiding undue waste of time and effort, and affords a protection by its requirements of suitable margin to protect contracts*"; and that the only exception is that it has the power under its charter to buy or sell coffee or sugar in the market for the purpose of protecting itself against a default by a member; but that in the entire existence of the Clearing Association very few such purchases or sales have ever been made. (R. pp. 43, 44.)

In answering specifically the charges in the petition relating to the transactions on the Exchange it is said, "*They admit that transactions on the Exchange in a great majority of cases do not involve the delivery of the amount of raw sugar sold thereby*"; but they

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deny that such transactions are not intended to involve the delivery of such sugar, or that such sugar is not actually sold thereby, and allege that all transactions on the Exchange contemplate the actual delivery of sugar, and that any buyer can compel its delivery. And "Defendants admit that such transactions are frequently completed on said Exchange by offsets, sometimes called matching, ring settlements, and payment of differences and by clearing through defendant, Clearing Association, where settlements are reached by offsets, sometimes called matching, payments of differences, etc., without delivery of the amount of sugar stated in the contracts," but they allege that all such settlements constitute offsets, and their validity has been established by the decisions of the Supreme Court of the United States and the Court of Appeals of the State of New York. (R. p. 48.) "They admit that on an average of upwards of 75 per cent of all transactions are cleared through defendant, Clearing Association, and that the percentages of the total number of contracts cleared through said Association for the months therein referred to are correctly stated in said paragraph IV of complainant's bill, except that the decimal point is incorrectly placed two places to the left in each of such cases. They admit that the Exchange has become and is the largest commercial center for transactions relating to sugar in the world. They admit that while but little sugar is actually delivered in consequence of the numerous transactions on the Exchange, yet the

purchases at any particular time are regarded as and are binding obligations and as establishing the price of sugar for the day for delivery at such time, and they admit that the course of the dealings, the fluctuations in prices up and down, are carefully tabulated and immediately transmitted by wire to all the markets of the world, and especially to the markets of the United States, and are published in the press of the United States and of many foreign countries"; but they say such transmittal is done by the Western Union Telegraph Company and not by defendants. (R. pp. 48, 49.) "They admit that the prices thus established and published are taken by those who own and sell sugar and those who purchase sugar as the basis for prices in actual transactions in very many cases, but they deny that there is any compulsion or obligation on such persons to take such prices as the basis for actual transactions, and they deny that they or either of them speculate or gamble in sugar for future delivery or control the prices of raw sugar paid by the refiner, or the prices of the wholesaler or jobber, or the prices of the retailer, or the prices paid by consumers throughout the United States." (R. p. 49.)

In answering the section of the petition in which the statistics relating to the condition of the sugar supply are recited the answer goes into considerable detail and undertakes to show that the actual and estimated supply of sugar, as shown by statisticians, are less than those given in the petition, and that the

conditions are more unfavorable than as indicated therein. (R. pp. 51-55.)

It is denied that the price movements for raw sugar were immediately reflected in the prices of refined sugar, but it is admitted "that the price of refined sugar, and also of 'spot' sugar, advanced contemporaneously with the advances in the price of 'futures' on the Exchange, and that the table set forth in the bill of complaint showing the refined sugar quotations of five of the principal refiners of the United States out of the sixteen or more refiners in the United States is substantially correct, and a comparison of the two tables shows that the advances over the same periods of the refiners' prices at times exceeded the advances on the Exchange of future prices"; and it is alleged that since the filing of the bill the prices of both refined sugar as fixed by the refiners and the prices of "futures" as traded in on the Exchange have contemporaneously advanced. (R. p. 56.)

The answer also admits that during February, 1923, the transactions on the Exchange aggregated approximately 1,515,050 tons, as compared with 362,850 tons in January, and that during the month of February only 300 tons were actually delivered; but it is alleged that the transactions during February were in future contracts for various subsequent months, which did not call for deliveries in February, while the February deliveries were made pursuant to contracts made in previous months; and that contracts

maturing in February were always comparatively small in amount. They also admit that the transactions on the Exchange during March, 1923, involved 937,900 tons, while deliveries amounted to only 1,250 tons; but they allege that said contracts were for future deliveries, while the actual deliveries were on contracts made during previous months; and it is denied that such transactions were otherwise illegal. (R. p. 59.)

It thus appears from the pleadings that there is no substantial disagreement as to the character and number of transactions had upon the Exchange, and the functions of the Exchange and the Clearing Association; and that the dispute relates entirely to the effect of such transactions upon the prices and volume of sugar moving in interstate and foreign commerce, and whether or not as a legal deduction the operation of said Exchange and Clearing Association in the manner described is violative of the Anti-Trust Act.

PROCEEDINGS.

Because of the importance of the action the Attorney General filed the certificate provided for in the expediting act of February 11, 1903 (32 Stat. 823; 36 Stat. 854). (R. p. 119.) And notice having been given, application was made to the four circuit judges of the Second Judicial Circuit for a temporary injunction in accordance with the prayer of the petition. Many affidavits and exhibits thereto were filed both in support of and in opposition to the application; and the court after hearing argument denied the

application. It was then agreed by all the parties that the court might finally determine the case upon the record as presented, treating all the affidavits and exhibits as evidence regularly taken and offered. And thereupon the court dismissed plaintiff's petition, from which action an appeal was prosecuted to this court. (R. pp. 172-173.)

ASSIGNMENT OF ERRORS.

Plaintiff assigned the following errors:

1. The court erred in refusing to adjudge and decree that the by-laws, rules, and regulations of the defendant corporations in so far as they relate to sugar, their adoption by said corporations and individual defendants, and the concerted action of defendants in carrying out said rules and regulations, constitute a combination and conspiracy in restraint of interstate and foreign trade and commerce in raw and refined sugar in violation of the Act of July 2, 1890, known as the Sherman Anti-Trust Act, and also in violation of Section 73 of the Act of August 27, 1894, as amended by the Act of February 12, 1913, known as the Wilson Tariff Act.

2. The court erred in not perpetually enjoining the defendants and each of them from the further operation of the Exchange and Clearing Association in so far as sugar is dealt in on said Exchange and Association and from engaging in the operation of any plan or scheme of like character or designed for a like purpose.

3. The court erred in not adjudging and decreeing that the adoption of the by-laws, rules, and regula-

tions of the defendants New York Coffee and Sugar Exchange (Inc.) and New York Coffee and Sugar Clearing Association (Inc.), which are designed to promote transactions in sugar of the character herein described, and the acquiescence in said by-laws, rules, and regulations by the members of said Exchange and Association, and the concerted action of said members under the same whereby transactions unlimited in number are made upon said Exchange and cleared through said Clearing Association purely speculative in character, and in which the seller does not own or expect or intend to acquire sugar for actual delivery or the purchaser does not have any present or future need for sugar, or intend or expect to accept an actual delivery of sugar, constitute a combination in restraint of interstate and foreign commerce in violation of said Anti-Trust Act of July 2, 1890, and of said Section 73 of said Wilson Tariff Act of August 27, 1894, as amended by the Act of February 12, 1913.

4. The court erred in not perpetually enjoining defendants from further permitting transactions upon said Exchange in which the seller does not own or expect or intend to acquire sugar for actual delivery, and transactions in which the purchaser has no present or future need for sugar and does not intend or expect to accept an actual delivery of sugar, and all other transactions of a speculative character.

5. The court erred in not perpetually enjoining defendants from engaging in transactions whereby artificial prices of sugar are created or prices are

affected by artificial means and without regard to the economic law of supply and demand as specifically prayed for in the petition.

6. The court erred in dismissing the petition and not granting the relief prayed for therein. (R. pp. 173-175.)

BRIEF AND ARGUMENT.

I.

Nothing but futures are bought and sold on the Exchange, and there are practically no deliveries made pursuant to such transactions.

As shown above, such fact is substantially admitted in defendants' answer, but because of its importance the following evidence is cited to emphasize the admission. Mr. Diercks, the president of the Exchange, says:

Trading in sugar is practically confined on the floor of the Exchange to trading in contracts for future delivery. Practically no contracts for immediate delivery, known as "spot contracts," take place there, although members of the Exchange make such contracts for immediate delivery with each other which are not reported to the Exchange. Any private trading in futures, however, by members of the Exchange is forbidden by rules of the Exchange, as the purpose of the Exchange is to maintain an open and untrammelled market in futures, where prevailing prices in futures are all recorded for the subsequent use and benefit of producers, dealers, and consumers of sugar. (R. p. 68.)

There are sixteen sugar refineries in the United States, which belong to ten companies. This means that all raw sugar sold in the United States must be purchased by only ten consumers of the raw product. Mr. Babst, president of the American Sugar Refining Company; Mr. Post, president of the National Sugar Refining Company; Mr. Lowry, of the firm of R. Atkins & Company, a copartnership; Mr. Jamison, of Arbuckle Brothers, a copartnership; and Mr. Smith, president of the Federal Sugar Refining Company, which concerns operate large refineries of sugar in New York, all testify that said concerns obtain their supply of raw sugar *by purchases from producers made through brokers, and not on the Exchange*. (R. pp. 120, 121, 123, 124, 126.) Mr. Lowry also filed an affidavit for defendants, in which he said that—

While we do not purchase our requirements of raw sugar on the Exchange, we have on two occasions sold a moderate quantity of futures on the Exchange, with the intention of delivering against these sales certain raw sugar that we held. (R. p. 86.)

Mr. W. S. Pardoner, who testifies for the defendants, says the Savannah Sugar Refining Company, of which he is vice president and secretary-treasurer, never buys sugar on the Exchange, but "has frequently protected itself against fluctuations in the value of its sugar by selling contracts for future delivery on said Exchange" (R. p. 118); Mr. J. H. Kempner, president of the Imperial Sugar Company, which operates a refinery at Sugarland, Texas, says his

company has "used the Exchange in a limited way to hedge purchases of raw sugar at Cuba until same could be refined and sold" (R. p. 118); and Mr. Bell, treasurer of the Warner Sugar Refining Company, says that "the warehouses owned by the company are licensed by the Sugar Exchange as warehouses for sugar"; and that "the company has found the New York Coffee and Sugar Exchange a useful medium for making contracts for future deliveries, which enables the company to maintain a constant refiner's margin and protects itself against fluctuations in prices of sugar" (R. p. 117). Therefore, *of the eight concerns engaged in the refining of sugar whose practices are proven none have purchased any sugar through the Exchange unless it be the Warner Company*; and Mr. Bell carefully refrains from stating what kind of contracts it makes upon the Exchange, or how they are settled.

There are also in the record statements of Arthur G. Hoffman, vice president of the Great Atlantic & Pacific Tea Company, a corporation conducting 7,500 chain stores in 2,187 cities located in 30 States of the United States; John A. Badenoch, vice president of Park Tilford, a corporation engaged in the manufacture and sale of candy and in the general grocery business; and Jacques R. Haas, vice president of Loft (Inc.), a corporation engaged in the manufacture and sale of candy, to the effect that none of these concerns buy their supplies of sugar through the Exchange. (R. pp. 128-130.) Each of twenty-six defendants who are members of the Ex-

change files an affidavit in which he says: "All of the contracts in sugar for future delivery made by me or my firm with another member *are cleared through the Clearing Association.*" (R. pp. 84-85.) This means that none of their transactions are settled by actual deliveries.

As to the proportion of actual deliveries to the number of transactions on the Exchange, the answer admits that upwards of 75 per cent of all transactions *are cleared through defendant Clearing Association*; and that the percentages of the contracts cleared through the Association for the months of November and December, 1922, and January, February, and March, 1923, stated in the petition are correct except that the decimal point is incorrectly placed to the left in each of such cases. (R. pp. 48, 49.) It is alleged in the petition that of the total number of contracts cleared through the Association in November, 1922, .0018 per cent were consummated by delivery; that of the total contracts so cleared in December, 1922, .0023 per cent were so consummated; of the contracts in January, 1923, .0010 per cent; in February, 1923, .0002 per cent; and in March, 1923, .0010 per cent were so consummated. (R. p. 14.) Whether the decimal point is correctly placed or not, what is meant is, that the number of deliveries made through the Exchange in November was $\frac{18}{100}$ of 1 per cent; in December, $\frac{23}{100}$ of 1 per cent; in January, $\frac{10}{100}$ of 1 per cent; in February, $\frac{2}{100}$ of 1 per cent; and in March, $\frac{10}{100}$ of 1 per cent of the number of transactions had thereon during such

months, respectively. (Walter Lewis, R. p. 166.) This corresponds with what is said by Lamborn & Company in their booklet, which will be hereafter noticed.

The allegation in the petition that "on an average about 75 per cent of all transactions are cleared through defendant Clearing Association" (R. p. 14) is subject to misconstruction. This statement is based on the table appearing on page 23, which shows the number of contracts made during the months of November and December, 1922, and January, February, and March, 1923, and the number disposed of and the manner of their disposition. It will be observed that 4,011 contracts were carried over from October, and each month a large number remained undisposed of. The relative percentages of the contracts cleared through the Association to those *made* during the months mentioned, as shown by said table, are as follows: For November, 108.8 per cent; for December, 86.7 per cent; for January, 82 per cent; for February, 95.4 per cent; and for March, 96 per cent. To the contracts cleared should be added those matched. And the relative percentages of *deliveries* on the Exchange to the contracts *made* during those months were, for November, $\frac{26}{100}$ of 1 per cent; for December, $\frac{34}{100}$ of 1 per cent; for January, $\frac{15}{100}$ of 1 per cent; for February, $\frac{12}{100}$ of 1 per cent; and for March, $\frac{13}{100}$ of 1 per cent. This is ascertained by calculation from the figures given in the table.

II.

The by-laws and rules controlling the Exchange and Clearing Association are designed to promote speculative transactions and to prevent deliveries of sugar through the Exchange. And when contracts made upon the Exchange are read in the light of its by-laws and rules, it is apparent that an actual delivery is rarely, if ever, contemplated.

The contract for the sale of raw sugar required by the by-laws and rules of the Exchange reads as follows:

OFFICE OF
New York.

Sold for

To

50 tons of 2,240 lbs. each of Sugar in bags, deliverable from licensed warehouse in the port of New York, between the first and last days of _____, inclusive. The delivery within such time to be at seller's option upon seven, eight, or nine days' notice to the buyer. The sugar to be of any grade or grades as specified in Section 88a at the price of _____ cents per lb. in bond, net cash for Cuba Centrifugal 96 degrees average polarization outturn with additions or deductions for other grades according to the rates of New York Coffee and Sugar Exchange (Inc.), existing upon the afternoon of the day previous to the date of the notice of delivery.

Either party to have the right to call for margins as the variations of the market for like deliveries may warrant, which margins shall be kept good. This contract is made in view of and in full accordance with the By-

Laws, Rules, and Conditions established by New York Coffee and Sugar Exchange (Inc.).

(Written across the face is the following:)
For and in consideration of one dollar to
----- in hand paid, receipt whereof is
hereby acknowledged; ----- accept this
contract with all its stipulations and conditions. (Charter, etc., of Exchange, pp. 48, 49.)

The contracts for duty-free raw sugar and for granulated sugar are similar in form and contain the same provision. (Charter, etc., pages 49, 50, and insert.)

The by-laws, rules, and conditions established by the Exchange corporation are expressly made a part of these contracts, and therefore they can be fully understood only when read in connection with those by-laws, rules, and conditions. Rule 1 of Sugar Trade Rules provides that "By-laws and rules governing transactions in coffee which do not conflict with the Sugar Trade Rules shall apply to sugar in the same manner as to coffee." (Charter, etc., p. 114.) Consequently the rules hereinafter cited apply to sugar, although sugar may not be expressly mentioned in them.

With reference to the quantity of sugar bought or sold, Rule 3 of Sugar Trade Rules provides that "All offers to buy or sell sugar for future delivery, unless otherwise specified, shall be understood to be for fifty tons, and offers to buy or sell in larger quantities shall be in multiples thereof." (Charter, etc., p. 114.)

The first two sentences of Trade Rule No. 12 read as follows:

All contracts for the future delivery of coffee shall be binding upon members, and of full force and effect until the quantity and quality of the coffee specified in such contract shall have been delivered, and the price specified in said contract shall have been paid. Nor shall any contract be entered into with any stipulation or understanding between the parties at the time of making such contract, that the terms of said contract as specified in Section 88 of the By-Laws are not to be fulfilled, and the coffee delivered and received in accordance with said section. (Charter, etc., pages 82-83.)

If the contract provided for were read solely in the light of this part of Rule 12, it would appear to be a *bona fide* one. But the subsequent conditions and limitations contained in the rule must be carefully considered in order to understand exactly the purposes of the Exchange and how the several contracts made thereon may be manipulated. Immediately following the provisions above quoted, and a part of the same rule, is the following:

Provided, however, that any person holding a contract against another, corresponding in all respects, except as to price, and date, with one held by the other party against him, may close or cancel both by giving notice in writing to the opposite party, at any time before notice of delivery; or where a "Ring" may be formed, all

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parties thereto shall be compelled to settle upon the terms hereinafter prescribed.

All "Ring" settlements shall be made at the prices first posted by the Superintendent on the day on which the "Ring" is made, and bills on the "Ring" or direct settlements shall be rendered by 11 a. m. on the day after that on which such "Ring" or settlement shall have been made, and must be paid by 2 p. m. on the day on which they are rendered, under a penalty of one-tenth of 1 cent per pound. On Saturdays all settlements must be made by 11.30 a. m.

The party making a "Ring" shall notify all the parties thereto, and get their initials in acknowledgment, leaving with each a copy thereof. If the "Ring" is not complete he shall, on the same day, notify all the parties thereto. The contract of the earliest date shall, in all cases, be the one considered settled (Charter, etc., page 83).

Rule 15 provides:

Where a transfer of a contract or a "Ring" has been verbally agreed upon by all parties, and all have been notified, it shall be in force from the time of the acknowledgment, and can not be broken by the failure of any party thereto (Charter, etc., p. 84).

Therefore if a seller or a purchaser has a contract executed by the other party for the same amount of sugar and for delivery in the same month, wherein they occupy opposite positions, he has a right to offset such contract by paying the difference in the price

specified therein. And, say A has sold fifty tons to B for future delivery in August, and B has sold to C, and C has sold to D, and D has sold to E, and E has sold to A, each fifty tons of sugar for delivery in the same month, then on notice as provided for in the rules, a ring may be formed and all of the contracts canceled by paying the differences in the prices stipulated in the contracts.

To facilitate settlements of contracts otherwise than by delivery, *and for no other purpose*, the Clearing Association was organized; and it is expressly provided in the last paragraph of Rule 3 of the Exchange (Charter, etc., pp. 74, 75): "*Unless otherwise stated at the time, all bids and offers and transactions resulting from such bids and offers shall be understood to be for clearance through the New York Coffee and Sugar Clearing Association (Inc.)*"

Section 12 of the By-Laws and Rules of the Clearing Association reads as follows:

The Association may accept (and by such acceptance the liability of the Clearing Member whose contract is accepted by the Association towards the other party shall be terminated and the Association substituted therefor) contracts offered to it by Clearing Members for clearance, and by such acceptance shall, in place of either party to a contract so accepted and toward the other party thereto, assume the obligations imposed thereby and succeed to and become vested with all the rights and benefits accruing therefrom, assuming to the buyer the position of seller and to the seller the position of buyer as the case may be.

Each Clearing Member shall make daily reports to the Association of all contracts for future delivery of coffee or sugar made by such member on the New York Coffee and Sugar Exchange (Inc.), with other Clearing Members in accordance with rules and regulations prescribed by the Directors.

Each report shall be accompanied by a check to the order of the Association, or draft upon it, for the amount necessary, after allowing for amounts theretofore paid on account, to mark outstanding contracts set forth in the report to the last closing bid prices on the New York Coffee and Sugar Exchange (Inc.), for coffee and sugar deliveries in the months mentioned in such contracts, respectively. (Marking a contract to the closing bid prices is the payment or receipt of the difference between the value of the contract at the contract price and at the closing bid price.) There shall also be attached to and be delivered with such report, a check for any original margin that may be required, as prescribed in Sections 14, 15, 16, and 17 of these By-Laws.

All contracts reported to the Association as above provided shall be deemed accepted by it, unless the parties thereto are notified in writing to the contrary by the Association on or before 10.30 a. m. of the following day, up to which time the Association has the right to refuse to accept any contract reported to it as aforesaid. (By-Laws and Rules of Association, pp. 13-14.)

Therefore the Association becomes the owner of the several contracts assigned to it, and they become extinguished merely by offsetting or matching, the assignor being paid, or required to pay, the difference according to whether he gained or lost in the day's transaction.

That the brokers who constitute the membership of the Exchange may not in the least be hampered in settling the contracts made by them during the day, *although they make them as agents and are not the real owners thereof*, by Rule 19 (Charter, etc., p. 92) it is provided:

Any member who may find that he holds, for account of his correspondents, contracts, both of sale and purchase, in the same month, which offset each other, shall be authorized to offset and settle such contracts, and to substitute therefor his own name, and he shall be responsible to his principals for the strict fulfillment of such contracts, and shall be liable to them for all damage or loss they may sustain by reason of such substitution.

But no rule has been adopted which provides a method for measuring or proving the damages that might result to the principal because of the substitution of the broker's name for his, and as a practical matter he is without redress. *Thus each member of the Exchange exercises absolute control over every contract made by him, and can settle them by matching, or by making or entering into rings, without consulting his principal, and even over his principal's protest.*

But suppose a member who sells, or one who purchases, determines to require a delivery of the sugar. It then becomes important to consider the process necessary to compel such delivery. The notice required is thus described in Rule 16:

When notice of delivery on the part of the seller, or demand of coffee by a buyer (when he has the option so to do) is required by contract, it shall be given by the party furnishing the coffee in the one case, and the buyer in the other case, to the party requiring said notice, either five, six, or seven days prior to the date of delivery, said notice to be given before 10.30 a. m. of the day of issuance (excepting as hereinafter provided). No notice shall be issued on a Saturday.

Notice may be issued by the seller on the last notice day of the month if a sale is made for delivery in the current month, but said notice must be delivered to the buyer within 15 minutes after the sale is made.

No notice shall be issued for over five days, unless either six or seven days shall be necessary to make the delivery fall on a business day. In no case shall a notice be issued that will allow less than three business days for transfer, including the day of its date.

The party receiving the notice may transfer the same to a subsequent party, and it may be given from one transferee to another. Every transfer must be made within twenty minutes, and every person receiving the notice shall indorse upon it the actual time he re-

ceives it. Any party who may fail to forward such notice within that time shall be liable to have the notice returned to him before 4 p. m. of that day. All transfers shall be made within the Exchange hours except as hereinafter provided, the notice becoming a short notice with the close of the Exchange on the day of its issue, and all differences thereon shall be paid as provided in the second paragraph of Rule 12, for payment of ring settlements. When sold as short notice, the payment shall be made direct, and the price made equal to that at which it was first issued.

Transferable Notices issued on the last notice day of the month may be transferred from one transferee to another until one hour after the close of the Exchange, becoming a "short notice" after that hour. (Charter, etc., pages 84-85.)

It is also provided that the issuers of a transferable notice shall have it officially stamped at the Exchange before circulation; and that should the office of a party to whom notice is to be given be closed, it shall be good service to give the notice to the Superintendent of the Exchange. Some modifications of these requirements as applied to sugar appear in Rule 12 of Sugar Trade Rules (Charter, etc., p. 117), and are as follows:

The initial presentation of a transferable notice for the delivery of sugar shall be made before 11 a. m. of the day of issuance. No notice shall be issued on a Saturday.

No notice shall be issued for over seven days, unless eight or nine days shall be necessary to make the delivery fall on a business day.

The party with whom a regular transferable notice shall finally lodge shall, within one hour thereafter, notify the issuer thereof appointing a licensed weighmaster to check the weights and also a sampler and chemist in accordance with Sugar Trade Rule 11, so that the samples may be drawn at the time of weighing. The failure of the receiver to notify the deliverer, as herein prescribed, shall subject him to the additional costs, if any, entailed in sampling after weighing.

And the following is the form provided for a transferable notice and conditions of acceptances:

TRANSFERABLE NOTICE FOR RAW SUGAR.

----- o'clock.

NEW YORK, 192-.

Z, X & Co.:

Take notice that on ----- shall deliver you 50 tons of 2,240 lbs. each in ---- bags of Centrifugal or Beet Sugar, in accordance with the terms of contract sale to you, dated ----- at ----- cents per pound.

----- pledge ----- to deliver sampling order to the last holder of this notice upon presentation of the same to -----; further pledge ----- to deliver on the ----- between the hours of ----- and ----- to the last acceptor of this notice, the negotiable warehouse receipt and withdrawal entry or entries

for the Sugar, against payment for the said Sugar, at the rate of ----- per pound; allowance, if any, to be made for excess or deficiency in the duty as established between the entry weight and polarization and the delivery weight and polarization.

Z, Y & Co.

CONDITIONS.

In consideration of one dollar paid to each of the acceptors, receipt of which is hereby acknowledged, it is agreed that the last acceptor hereof will, between the hours of ----- and ----- o'clock on the day preceding the -----, present the within notice to Z, Y & Co., and, on the following day, between the hours of ----- and ----- o'clock receive the negotiable warehouse receipt and duly executed withdrawal entry, or entries, and pay for the Sugar at the rate of ----- per lb., basis Cuba Centrifugal 96 degrees average polarization outturn, with additions or deductions for other grades, according to the rate of the New York Coffee and Sugar Exchange, Inc., existing on the afternoon of the day previous to the date of this notice. It is further agreed that each acceptor hereof shall continue his (or their) liability to each other for the fulfillment of the contract until this notice shall have been returned to Z, Y & Co., and a sampling order, specifying the sugar to be delivered, received by the last acceptor hereof from Z, Y & Co., and a negotiable warehouse receipt and withdrawal entry, or entries, shall have been de-

livered, at which time all responsibilities of intermediate parties shall cease.

Z, X & Co.

(Charter, etc., pages 118-119.)

It appears, therefore, that if a buyer has sold to another the same quantity that he had bought and for delivery in the same month, he may transfer his obligation to accept delivery to such purchaser provided he execute the notice within twenty minutes after receiving the same, and the differences between the contracts are settled in the manner provided for ring settlements; and the transfers of the notice may be continued until it probably will find lodgment with a member who can offset it against a sale to the party who is demanding the delivery.

In case a delivery is not made or accepted, notwithstanding notice has been duly given, then the question arises whether Rule 18 (Charter, p. 90) is applicable. This rule reads as follows:

In case of failure to deliver the coffee named in the contract when due, the basis of settlement of coffee due on such contract for default in delivery shall be one-quarter of one cent per pound on the entire contract above the net cash quotation for No. 7 Spot Coffee of the day of delivery, and in case of failure to receive the coffee named in the contract when due, if it shall prove to be the fault of the buyer, the basis of settlement of coffee to be received on such contract for default in receiving shall be one-quarter of one per cent per pound on the entire contract above the net cash quotation

for No. 7 Spot Coffee of the day following the day of delivery, provided, however, that no seller shall be entitled to receive penalty who has not given the stipulated notice of intention to deliver, and no buyer unless proper demand has been made by him before the expiration of the contract; provided also, that no defaulting party can claim settlement under this rule except upon evidence that the default was unintentional and not premeditated.

The price of Spot Coffee shall be fixed by the Spot Quotation Committee, on the actual value of No. 7 Spot Coffee, on said day of delivery, with the right to appeal by any party in interest to the Board of Managers, provided notice of appeal and \$25 be deposited with the Superintendent of the Exchange, within twenty-four hours after the Spot Quotation Committee shall have established the net cash price of No. 7, as prescribed in Section 33. Nothing, however, in this rule shall be construed to prevent a settlement by mutual consent.

RULE 18a. Settlement shall be made, if demanded, for any deficiency or excess from weights specified on the face of the contract where the variation is in excess of one per cent and not exceeding four per cent, except where such deficiency is caused by the allowance prescribed in Trade Rule 28, either at the net cash value of No. 7 Spot Coffee on the day of delivery, with one-fourth ($\frac{1}{4}$) of one per cent per pound penalty, or in case of a deficiency the deliverer may supply the quantity required and a supplementary Certificate

of Grade, to be a part of the original certificate and of the same expiration, to be issued for such additional coffee, provided also that no defaulting party can claim settlement under this rule except upon evidence that the default was unintentional and not premeditated.

The provisions of this rule are made applicable to sugar transactions by sugar trading rule No. 15 (Charter, etc., p. 120), which reads as follows:

The provisions of Trade Rule 18 shall apply to sugar transactions excepting that the basis of settlement on raw sugar shall be one-quarter of a cent per pound above the quotation for Spot Cuba Centrifugal 96 degrees average polarization outturn, as established daily by the Sugar Committee. On Refined Sugar the settlement shall be made on the Spot Quotation at Chicago as established daily by the Sugar Committee and shall be at the rate of $\frac{3}{8}$ of a cent per pound.

No seller shall be entitled to receive penalty who has not given the stipulated notice of intention to deliver, and no buyer unless proper demand has been made by him before the expiration of the contract; provided, however, that no defaulting party can claim settlement under this rule except upon evidence that the default was unintentional and not premeditated.

How easy it may be made to appear that the default was unintentional depends entirely upon the practice on the Exchange and the inclination of those selected to enforce the rule.

But should all these requirements fail to stop the delivery, then the following provisions, appearing in Rule 21 (Charter, etc., pp. 93, 94), which relate to the actual delivery, become applicable:

The party with whom the transferable notice has finally lodged shall show the same to the issuer thereof, on the day before the delivery and within the prescribed hours, retaining the transferable notice until the delivery is completed.

Should the certificate of grade be ready for representation, the issuer of the notice shall, on the day of delivery, present at the office of the party holding the transferable notice, between the hours of 12 m. and 2 p. m. (except when such business day shall be Saturday, in which case the hours shall be 10.30 a. m. and 11.30 a. m.) a bill, weigher's return, certificate of grade, and negotiable warehouse receipt duly endorsed, for each delivery of about 250 bags of coffee, whereupon the delivery and payment shall be simultaneously made.

Upon a redelivery of a negotiable warehouse receipt, it shall be at the option of the deliverer to deliver the receipt free and clear of all expense or to allow the monthly charge of the warehouse in which the merchandise is stored for each month that has expired since the date of the warehouse receipt, or since the date to which the storage has been paid and so stamped on warehouse receipts, and for fractional part of a month, one-half the monthly charge of such warehouse for the first fifteen

days and the full monthly charge for sixteen days or over.

Should the certificate of grade not be ready for presentation the delivery shall take place as above and the receiver shall make payment of the bill presented retaining $\frac{1}{2}$ c. per pound on the net weights delivered until the grading certificate is furnished. Any deliverer of coffee who shall present a bill for more than a grade above that finally established shall be subject to a complaint under Sec. 46 of the By-Laws.

The estimated value of the coffee tendered in this manner must be stated upon the bill and the difference between this amount and that paid shall be, if demanded, deposited in a designated depository of the Exchange in the same manner as required in the deposit of margins, until the certificate of grade is furnished.

On such deposits the parties are entitled to interest at the rate allowed by the depository on the amount ascertained on final settlement to be due to each, but all such deposits are subject to Trade Rule 11 applying to variation margins.

And to make it certain that the real owner of the contract shall have no connection whatever with the delivery of the sugar, Rule 23 (Charter, etc., p. 96) provides:

Coffee delivered on contract shall be so delivered and received only by the brokers employed in such delivery or receipt. *No principal, either by himself or through any agent,*

shall be allowed to interfere in such delivery by word or deed, directly or indirectly; and in case of such interference the delivery or receipt of the coffee upon the contract in which such interference shall take place shall be at once stopped, and the principal so interfering shall pay to the other party a penalty of one-half of one cent per pound on all the coffee not delivered thereon at the time such interference took place.

Then, to penalize anyone who shall insist to the end on delivering or requiring a delivery of sugar, Sec. 104 of the rules provides (Charter, etc., p. 64):

Upon the delivery or receipt of coffee, or sugar, or when a contract is settled by a customer giving or receiving a transferable notice in fulfillment thereof, a brokerage, in addition to any commission that the purchase or sale of the coffee, or sugar, may be subject to, shall be paid.

For delivery or receipt of coffee or sugar such brokerage shall be not less than the corresponding commission prescribed in Section 103 for buying or selling.

When a transferable notice is given or received by a customer in fulfillment of a contract, the brokerage in that case shall be not less than one-half of the corresponding buying or selling commission prescribed in Section 103.

The commissions on sugar transactions appear in Sec. 103 (Charter, etc., pp. 62, 63), and are as follows:

RAW SUGAR (PER CONTRACT OF 50 TONS).

For members residing within the United States, Cuba, and Porto Rico:

Based upon a price--	Commission for buying or selling.	Floor brokerage for buying or selling.
Below 4 cents.....	\$6. 25	\$1. 50
4 cents up to 9. 99 cents.....	7. 50	1. 75
10 cents up to 12. 99 cents.....	8. 75	1. 85
13 cents up to 17. 99 cents.....	10. 00	2. 00
18 cents and above.....	12. 50	2. 50

For nonmembers residing within the United States, Cuba, and Porto Rico double the above rates of commission shall be charged.

For members and nonmembers residing outside the United States, Cuba, and Porto Rico a commission of \$2.50 shall be charged in addition to the above rates.

REFINED SUGAR (PER CONTRACT OF 800 BAGS).

The minimum rate of commission for members residing within the United States, Cuba, and Porto Rico:

Based upon a price--	Commission for buying or selling	Floor brokerage for buying or selling.
Up to 9.99c.....	\$7. 50	\$1. 75
10c up to 12.99c.....	8. 75	1. 85
13c up to 17.99c.....	10. 00	2. 00
18c up.....	12. 50	2. 50

For nonmembers residing within the United States, Cuba, and Porto Rico double the above rates shall be charged.

For members and nonmembers residing outside the United States, Cuba, and Porto Rico a commission of \$2.50 shall be charged in addition to the above rates.

Whenever before thirty minutes after the close of the Exchange a member gives to another member for clearance purchases and sales of contracts corresponding in all respects except as to price, made during the day by himself or for his account when present on the floor of the Exchange, a charge for each contract shall be made equal to the corresponding floor brokerage rate for buying and selling, in addition to any floor brokerage incurred.

Members procuring business for other members may, by agreement, be entitled to one-half the commission rates for nonmembers prescribed in this section, less the corresponding brokerage charge, whether paid or not. But the division of nonmembers' rates of commission for procuring business, as prescribed in this section, must be based only on the scheduled rates prescribed therein, without regard to the additional charge imposed in said section.

The above-mentioned rates shall be, in each case, the minimum commission that may be charged by any member of the Exchange, and shall be absolutely net and free of all and any rebate and discount, in any way, shape, or manner; nor shall any bonus or pro rata percentage of commission be given or allowed to any clerk or individual, not a member of the Exchange, for business procured or sought

for any member of the Exchange; and any arrangement having in view, directly or indirectly, any rebate from the said rates shall be deemed an evasion and violation of this By-Law.

To prevent any interference by the courts at the instance of a member with the affairs of the Exchange, Section 84 of the By-Laws and Rules (Exchange, etc., p. 42) provides:

"Any member who shall himself, or whose partner or partners shall apply for an injunction or legal instrument restraining any officer or committee of the Exchange from performing his or its duties under the By-Laws and Rules shall, by that act, cease to be a member of the Exchange."

The total extra cost incident to a delivery of sugar on the Exchange will appear from quotations from a booklet recently issued by Lamborn & Company, who are brokers and members of the Exchange and the Clearing Association, Lamborn himself being a member of the board of directors of the Exchange. This booklet is entitled "Modern Methods of Marketing Cuban Raw Sugar"; and it describes in considerable detail the uses of the Exchange and operations thereon. *And it appears therefrom that the intention to make the Exchange only a rendezvous for speculators in sugar futures, and not a conduit through which sugar shall actually pass from the producer or manufacturer to their customers, is fully accomplished.*

In this booklet under the head "Should the Price of Near-by Futures be the Same as the Cost and Freight Price" (Booklet, pages 10 to 15), it is said:

It is expensive to deliver or receive sugars through the channels of the Exchange. The idea, therefore, is that the seller will buy back his Exchange contract and sell in the cost and freight market, and that the buyer will sell his Exchange contract and buy in the cost and freight market.

On the same subject it is again said:

Question. Does it cost more to deliver through the channels of the Exchange than to deliver in the ordinary way?

Answer. Yes.

Question. Why?

Answer. To be safe. Without going into details, the Exchange provides certain guarantees to effectually safeguard the delivery and receipt of sugar. It provides certain machinery of delivery which is somewhat cumbersome in order that it be safe. This is true of all commodity Exchanges.

Question. How much does it cost to deliver on the Exchange?

Answer. *At the present writing, it costs the seller a minimum price of about 11c. and a maximum price of about 16c. to place sugars in warehouse and deliver on the New York Exchange. It also costs buyers about 14 cents to accept delivery on the New York Exchange and redeliver to their own warehouses, or to refiners.*

Question. Is it possible to buy and sell futures on the Exchange without paying this extra expense?

Answer. Yes. Approximately 6,000,000 tons of sugar were traded in during 1922 on the New York Coffee and Sugar Exchange, but only 55,000 tons were actually delivered through the channels of the Exchange. Under the rules of the Exchange, the seller of futures may buy back his Exchange contract, thereby being in a position to sell his actual sugars in the open market. The buyer also may sell his futures contract and buy his actual sugar in the open market.

By so doing, they save the unnecessary expense of deliveries and receipts through Exchange channels. It is very simple. The two Exchange contracts cancel each other automatically through machinery provided by the Exchange.

Then, under the heading "How it Works—An Example," it is said:

Let us assume that the original Exchange transaction was made at \$5.00. Let us further assume that as the time for liquidation arrives the cost and freight market is still at \$5.00. If delivery is made on the Exchange, the seller must pay, let us say, 16c., so that he will net only \$4.84. The buyer if he accepts delivery must also pay 14c. for delivery charges, so that his cost would be \$5.14.

Normally, the seller would be glad to buy on the Exchange at \$5.00 and sell in the cost and freight market at this price, thereby saving the cost of making delivery. Normally, the buyer would be glad to sell at \$5.00 and buy in the cost and freight market at this price, thereby

saving cost of taking delivery. But it sometimes happens that it would be very embarrassing to the buyer to accept delivery. The seller is in a much better position to make delivery, and if he knows he has the advantage, which he sometimes does, he can sometimes buy back his contract at a lower price than the cost and freight price. Regardless of the fact that it costs the seller, say, 16c to make delivery, it costs the buyer 14c to accept delivery. If the seller gives notice of delivery, the buyer must sell within twenty minutes or accept delivery. If he accepts, it will cost him 14c. Any amount less than 14c below the cost and freight market (where he will buy if he sells futures) will be a saving. Possibly, the buyer might not wish to tie up money at that particular time and would let the seller have the contract at \$4.86, or the full 14c under the cost and freight market. A speculator might get panicky and accept even less. In the above case the seller would sell his actual sugar for \$5.00 to which would be added this 14c profit. The seller would have made 14c more than expected and the buyer 14c less. The reverse also may be true. The buyer might be in a better position to accept delivery than the seller was in to make delivery. The advantage would then be with the buyer. Regardless of the fact that it costs the buyer 14c to accept delivery, it costs the seller 16c to make delivery. If the buyer thinks the seller can not make delivery, due to delayed arrival of raws, or for any other reason, the buyer will not sell his

futures and buy cost and freight at par. The buyer will try to get a higher price for his futures than the cost and freight market. The seller might locate a lot of cost and freight raws that he could deliver, but this would cost 16c. Any amount less than 16c above the cost and freight market (where he would sell if he buys futures) would be a saving. The seller might not wish to buy a round amount of cost and freight sugars to deliver against a small amount of futures and, therefore, might pay \$5.16, or the full 16c premium over the cost and freight market. A speculative seller might get nervous and pay even more. (Booklet, pp. 12-15.)

Under the caption "Extremes Above or Below Cost and Freight Should Not Govern Your Futures Transactions" (Booklet, pp. 15-18), the author of this booklet further says:

We have shown that with the cost and freight market at \$5.00 futures might sell at or slightly lower than \$4.86 or as high as \$5.16—possibly a little higher. The price will always be a reflection of the composite views of the interested buyers and sellers. While the obvious would be for buyers and sellers to liquidate futures at the exact price of the cost and freight market, thereby giving advantage to neither buyer nor seller, this can not be made compulsory and still have a free market. Human nature will have its fling. The buyer will try to outrade the seller in making him think that he will accept de-

livery and the seller will try to outtrade the buyer and try to make him think he will make delivery. Buyers and sellers in the Sugar Exchange market are no different from buyers and sellers the world over. The buyer is always trying to buy low and the seller to sell high. These are natural instincts. *They can not be stifled. The safety valve is that every time the seller makes the buyer take delivery or the buyer makes the seller make delivery, they are both penalized by the respective costs of making and taking delivery.*

No one delivers or receives on the Exchange because they want to pay these extra expenses. It is a question of delivering small quantities through the Exchange in order to try to outguess the other fellow. For example, say a seller has sold 5,000 tons on the Exchange. The month for delivery arrives. If he can not repurchase at about the cost and freight market, he may issue delivery notice for, say, 500 tons. He will risk spending 11c. to 16c. per 100 pounds extra on 500 tons to improve his chances of buying back the other 4,500 tons at or below the cost and freight market. It may work. On the other hand, if the buyer thinks he can outguess the seller, he will accept delivery of the 500 tons. The buyer will risk spending 14c. per 100 pounds extra on 500 tons, with the object of discouraging the seller and making him pay above the cost and freight market for the other 4,500 tons.

From the above it would seem conclusive that the extremes above and below the cost

and freight market should not govern your course of action.

It seems very certain that no such large volume as nearly 6,000,000 tons of sugar could have been traded in during 1922, if every time the seller sold at, say, \$5.00, and the buyer bought at, say, \$5.00, they figured that with the cost of making and taking delivery they were selling at \$4.84 and buying at \$5.14. If every Exchange sale was made on the premise by the seller that he would net 16c. less than the Exchange price, and on the premise by the buyer that it would cost him 14c. more than the Exchange price, there would be a difference of 30c. between the net to the buyer and the net to the seller at the same Exchange price. This difference, if figured by every seller and every buyer, would have seriously reduced the volume of business. That buyers and sellers have thought correctly in not figuring the full cost of making and taking delivery, is shown by the fact that *less than 1 per cent of the volume of trading resulted in deliveries through the Exchange channels.*

A person making a limited number of transactions might consider deducting from the selling price the cost of making delivery, or adding to his buying price the expense of taking delivery. The fewer the number of transactions, the safer this would make it. The more constantly the Exchange is used, the safer it would be to figure that while the cost and freight market will not always be the same as the *near-by* Exchange deliveries—

sometimes being a little higher and sometimes a little lower—on the average it will work out about the same as the Exchange market.

It is apparent, therefore, that the Exchange was intentionally so organized and controlled as to prohibit the making of deliveries pursuant to contracts made thereon; and that it was established solely for the purpose of trading or speculating in futures, with no expectation or intention that the contracts entered into on the Exchange should be consummated by a bona fide compliance with their terms.

III.

Relation between the prices of near-by futures on the Exchange and prices in the cost and freight market.

As there is no trading in spot sugar on the Exchange, the spot prices are controlled by the prices of the near-by futures.

That the Exchange prices govern or vitally affect the spot prices of sugar in the cost and freight market is really undisputed; but the court's attention is specially called to the following evidence upon the subject.

In an interview which Maj. L'Esperance, a special assistant to the Attorney General, had with Mr. Stroud, superintendent of the Exchange, Mr. Stroud said: "*The transactions on this Exchange every day fix the price of sugar for the entire world; the refiners do not make a move until this Exchange opens in the morning.*" (R. p. 169.)

Mr. Post, of the National Sugar Refining Company of New Jersey, states: "That the prices which said corporation [the National Sugar Refining Company] has been compelled to pay for raw sugar required in the conduct of its business are strongly influenced, and at times seemingly controlled, by the prices established as a result of transactions in 'futures' taking place from day to day on the floor of the New York Coffee and Sugar Exchange (Inc.); that the rapidly advancing price of raw sugar since February 1, 1923, has necessitated correspondingly rapid increases in the price of refined sugar." (R. p. 126.)

The same statement in effect is made by Mr. Babst, of the American Sugar Refining Company (R. p. 123); Mr. Jamison, of Arbuckle Brothers (R. p. 122); Mr. Lowry, of R. Atkins & Company (R. p. 125); and Mr. Smith, of the Federal Sugar Refining Company (R. p. 120).

Bearing upon this subject, in Lamborn & Company's booklet, it is said:

If this is done [the seller buy back his contract and sell in the cost and freight market] when the Exchange prices and the cost and freight prices are identical, then both buyer and seller of the original futures contracts have changed their futures contracts (on which there is the cost of making and taking delivery) to raw sugar cost and freight, at the total price of their original futures contracts.

Theoretically it should be possible to buy or sell futures for nearby delivery at approxi-

mately the same price that you would pay or obtain in the open market for the actual commodity. That is, if you had sold futures and when the delivery date approached if you wished to buy back the contract you had sold, you should be able to do this at about the price then ruling in the raw market cost and freight New York.

But this is where theory and fact part company. As you will see by the accompanying charts there is usually a slight difference between the cost and freight market and the nearby futures market, although the two markets keep returning to equality. There is no such thing as an average variation. The variation, however, is rarely more than slight. The variation would probably be even less if none but refiners and raw sugar producers used the Exchange, but speculators can not be kept out of the market. To be of value, it must be free. (Booklet, pp. 10, 11.)

And again:

Those who use the Exchange more or less constantly can, we believe, with considerable safety consider that the cost and freight market—sometimes being a little higher; sometimes a little lower—will on the average work out *about* the same as the Exchange market. To one making a very limited number of transactions it would probably be safest to allow a margin or difference between the Exchange price and the cost and freight market. The amount of this margin or difference might be determined by the cost of

making delivery on the Exchange if a seller, or accepting delivery if a buyer. (Booklet, p. 11.)

On pages 14 and 16 of the booklet are two charts which show the close relationship between the cost and freight market prices and the prices on the Exchange. In connection with a table showing spot prices of raw sugar on the several dates from February 1 to April 21, 1923, Mr. Diercks says:

I give below the *spot* prices in New York on each of said days, from which it will be seen that the price for spot sugar rose concurrently with the advances in futures and with the refiners' advances for refined sugar. No spot sugar is sold on the Exchange, *but the Exchange keeps a record of prices as determined each day by its Sugar Committee, for purposes of settlement in accordance with Sugar Trade Rule 50, hereinbefore set forth.* (R. 76.)

And a comparison of the tables (R. pp. 20, 76) does show, as said by Mr. Diercks, that spot prices and prices of futures fluctuated in the same way, though not always to the same extent. This table will be again referred to hereafter.

The foregoing evidence shows that the prices of sugar in the market both for immediate and future delivery are controlled entirely by the prices upon the Exchange, although there may be a slight difference between the spot price and the price of the nearest future.

IV.

Contracts on the Exchange.

1. Hedging Contracts.

The foregoing facts and deductions therefrom will be helpful in discussing intelligently the different classes of transactions upon the Exchange. Consideration will first be given to hedging contracts.

With reference to such contracts it is said in the answer:

That a large part of the total volume of trading in sugar for future delivery in the exchange room of said Exchange, as above described, consists of contracts made by producers of sugar, refiners, merchants, and other consumers, *who make such contracts entirely for the purpose of insuring themselves against price fluctuations, respecting sugar either owned, sold, or purchased by them, for the purpose of merchandising or shipping to consuming markets or refining, or using in manufactured products in which sugar is used, and that in most cases such contracts for future delivery are fulfilled by the making of counter contracts to offset the ones originally made; the actual sugar which such future contracts were based upon being sold or disposed of to refiners or others.* (R. pp. 40, 41.)

Mr. Diercks, president of the Exchange corporation, says:

Although it is impossible actually to state the proportion, since it is within no single man's knowledge or means of knowledge, I am

convinced that the greater part of the trading in sugar on the floor of the Exchange represents transactions legitimately made by producers, dealers, or consumers of sugar for the purpose of protecting themselves from fluctuations in value of the sugar which they own or have bought or intend to buy. The quantity of sugar dealt in on the Exchange necessarily is many times larger than the amount of sugar actually involved in commercial operations, for the reason that three or more owners or handlers of such sugar may seek the benefits of future trading to protect them in their legitimate business. (R. p. 68.)

Mr. Bennett, first vice president of the Bank of America, says:

We are always willing to loan to a greater extent against sugar purchased or owned by the borrower if any loss due to a decrease in the value of the sugar is protected by sales of "futures" on the Sugar Exchange, because such sales afford protection against possible loss arising from marked fluctuations in price. We, therefore, regard the opportunities which the Sugar Exchange gives for the making of future contracts as a valuable economic function and of great importance in connection with the normal trade in sugar. Such contracts for future delivery, in our opinion, have the effect of stabilizing the market, tending to prevent sudden fluctuations. (R. p. 89.)

Similar statements are made on behalf of defendants by Bernard D. Forster, vice president of the Bank of Manhattan Company (R. p. 89); Walter F.

Frew, president of the Corn Exchange Bank (R. p. 90); Joseph W. Harriman, president of the Harriman National Bank (R. p. 91); William N. Kingsley, vice president of the United States Trust Company (R. p. 91); H. J. Cook, vice president of the Equitable Trust Company (R. p. 92); F. J. Leary, vice president of the Central Union Trust Company (R. p. 115); and E. W. Stetson, vice president of the Guarantee Trust Company (R. p. 115). Defendants also introduced statements by Charles Godchaux, president of the Godchaux Sugars (Inc.) (R. pp. 93, 94), and Horatio B. Young, secretary of the W. J. McCahan Sugar Refining and Molasses Company (R. pp. 94, 95), to the effect that they sometimes purchase future requirements on the Exchange and frequently protect themselves by selling contracts for future delivery on the Exchange; and also introduced the statement of Charles C. Dupratt, of the American Beet Sugar Company (R. p. 93), to the effect that their concern had not yet protected itself against fluctuations in the price of sugar by selling contracts on the Exchange, but had been considering doing so; and that in his judgment the Exchange "fulfills a great economic function and facilitates the marketing of the sugar crop by keeping the producing and consuming public advised of the trend of world opinion with respect to prices." Mr. Strauss, chairman of the board of directors of the Cuba Cane Sugar Corporation, "one of the largest single producers of raw sugar in the island of Cuba," says "We find opportunities afforded by the New York

Coffee and Sugar Exchange for making contracts for the sale of futures advantageous and useful in our business by permitting us to limit our risks on the fluctuations of the market" (R. p. 116). Twenty-six members of the Exchange say that to their personal knowledge the greater part of the transactions on the Exchange in which they and their firms have participated "constituted hedges made by parties who were actually engaged in the producing, handling, or distribution of sugar for the protection of actual sugar transactions" (R. pp. 84, 85). Manifestly, therefore, defendants realize that the justification, if there be any, for the existence of the Sugar Exchange is in the fact that the Exchange affords to *bona fide* sellers or purchasers of sugar an opportunity to secure themselves against loss, which it is claimed is done by means of hedging contracts.

In the first place, defendants are undoubtedly mistaken as to the ratio between hedging contracts and those that are purely speculative. There is some permanency about a hedging contract. It is not canceled on the day it is made but is carried probably for two or more months. The table on page 23 of the record shows the number of contracts made during each month from November, 1922, to March, 1923, inclusive, and also the number carried over from each preceding month. There were generally about twice the number made as were carried over, and in February, 1923, there were about seven times, and in March about four times as many made as had been carried over. All this clearly shows that

purely speculative contracts are always in excess of those made for hedging purposes, and for the latter months mentioned they were greatly in excess.

But as so much stress is laid upon hedging contracts, let us study them carefully and ascertain their functions and effect.

In all illustrations it will be assumed that the cost and freight price and the Exchange price are the same, as is assumed in the examples given by Lam-born & Company, and also by Meinrath Brokerage Company, to which reference will be hereafter made.

The several classes of hedging contracts will be considered separately.

1st. Selling Sugar.

(a) Selling futures on the Exchange in anticipation of actual sales to be made outside the Exchange.

In such a transaction, of course, the seller never intends to make an actual delivery but to cancel the sale by a subsequent contract of purchase on the Exchange of a like quantity.

Suppose it is January, and a cane grower or grinder expects to have 100 tons of sugar for delivery in May; the price for May deliveries is \$5.00 per hundred pounds, and he is willing to accept that price for his anticipated production. He then sells upon the Exchange 100 tons at \$5.00 per hundred. This is called a short sale, because he does not then own the sugar. When May arrives suppose the price has declined to \$4.50 per hundred. He then buys

100 tons on the Exchange at \$4.50 and cancels his contract, receiving a margin of 50 cents per hundred profit, and he sells his real sugar outside the Exchange upon the cost and freight market at the prevailing market price of \$4.50 per hundred. This added to his margin of profit makes \$5.00 per hundred, or the price at which the future sale was made in January.

Again, suppose that the price has advanced to \$5.50; then the seller will buy on the Exchange 100 tons at \$5.50 to cancel his contract at \$5.00, and will lose 50 cents per hundred; but he will sell his real sugar on the cost and freight market at \$5.50, or 50 cents more than the price in January; and the 50-cent loss on the Exchange transaction is offset by the 50-cent advance in the market. *In both of these instances the seller receives exactly the price he would have received in January in a bona fide sale of sugar to be delivered in May, but has had to pay the commission on two transactions on the Exchange.*

The above illustration is in substance the same as those given in the booklet by Lamborn & Company. Let us examine those illustrations somewhat minutely. The first one illustrates hedging "to predetermine a colono's profit." (Booklet, pp. 23-25.) A colono is a cane grower in Cuba; and he may want to sell his anticipated crop for delivery at the time it will be converted into sugar. It is there assumed that the colono will have 500 tons of sugar, and that the March price on the Exchange is \$5.00, from which

is deducted 30 cents for the cost of placing the sugar in New York, leaving \$4.70, which is called the promedio price. The problem is thus solved for both a declining and an advancing market.

If promedio price declined to.....	\$2.70
You should pay in covering futures about.....	\$4.00
Price at which you sold futures.....	5.00
Add profit on Exchange hedge.....	1.00
Total price as predetermined.....	4.70

This is what you set out to effect, i. e., of having your profits based on a promedio price of \$4.70.

If the reverse situation exists and sugar has advanced let us say to \$6.00, you will take a loss of \$1.00 per 100 pounds in covering your futures sale, but the promedio price should also be \$1.00 higher, or \$5.70. This is the way to figure your receipts in this case.

If promedio price advanced to.....	\$5.70
You should pay in covering futures about.....	\$6.00
Price at which you sold futures.....	5.00
Deduct loss on Exchange hedge.....	1.00
Total price as predetermined.....	4.70

In one case the market declined after your hedge and in the other case it advanced, but in both instances you obtained the price you figured on when you hedged.

If at the time your cane was being delivered to the Central, there had been no particular change in the price of futures, you should make no profit or loss on your Exchange transaction. But you would have had the assurance that had the market declined you would still have received a satisfactory figure for your cane (Booklet, p. 25).

It is thus made to appear that the colono is enabled by these transactions on the Exchange to secure in March the price which sugar for March delivery is bringing at the time he desires to make the sale. *But what would the figures be should the colono then sell his ACTUAL sugar at the prevailing price for delivery when the sugar shall be produced in March? By such a contract every item in both calculations would be eliminated except the result, to wit, "total price as predetermined, \$4.70."*

There is then illustrated with figures a little more complicated "Hedging to determine a central's profit when grinding colono cane." (Booklet, pp. 26-28.) A central is one who grinds the grower's cane. He contracts to give to the grower sugar to the amount of a certain per cent, say from 5 to 7 per cent, of the weight of the cane, or to pay him the promedio price for that quantity of sugar. The rendement is the per cent of the cane that is converted into sugar. In this problem it is supposed that the colono has brought the central 10,000 tons of cane; that the rendement is 10 per cent, of which the colono is to receive 5 per cent, or one-half, and that therefore the central will have 500 tons against which to hedge by selling March futures at \$5.00 per hundred pounds. It is also assumed that it will cost the central \$2.00 per ton, or \$20,000, to grind the cane and 50 cents per hundred pounds, or \$5,600, to place the sugar in New York—not in an exchange warehouse, however, because it is not intended that the sugar shall ever be

delivered through the Exchange. The problem is then solved as follows:

Hedges by selling futures at.....	\$5.00
If the Exchange market declines to.....	4.00
Price of sugar C. & F. N. Y. should decline to about.....	4.00
Profit on hedge \$1.00 per 100 lbs. or total of.....	\$11,200
Price central would receive for 500 tons of actual sugar at \$4.00 C. & F.....	44,800
Gross receipts.....	56,000
Cost of manufacture.....	20,000
Cost of placing C. & F.....	5,600
	<u>25,600</u>
Total profit on all transactions.....	30,400

Though the market declined as anticipated, the central secured the total profit of \$30,400, because of their hedge at \$5.00.

Suppose the market advanced, instead of declining, let us say to \$6.00. The price of actual sugar C. & F. N. Y. should be about \$6.00.

Price central would receive for 500 tons of actual sugar at \$6.00 C. & F.....	\$67,200
Cost of manufacture and placing C. & F.....	\$25,600
Loss on hedge.....	11,200
	<u>36,800</u>
Total profit on all transactions.....	30,400

And then it is gravely said:

It will again be noted that the central secured the total profit of \$30,400, which they had previously determined was a satisfactory one when they hedged at \$5.00.

In each case the result is the same. The central by hedging predetermined the amount of their profit. * * * Whether the market declines, advances, or stays the same, the central by hedging is able to predetermine the approximate amount of their profit.

But why is this done *by hedging*? He could have determined it just as certainly, and without the expense of the Exchange transactions, by making a *bona fide* sale of his sugar for delivery in March. In case he had made such a contract the solution of the problem would be as follows:

500 (long) tons of sugar, at \$5.00 per 100 lbs.....	\$56,000
Cost of manufacture.....	\$20,000
Cost of placing C. & F.....	5,000
	<hr/> 25,000
Total profit on all transactions.....	30,400

Another problem of precisely the same character is stated and solved to illustrate "Hedging to determine a central's profit from administration cane." (Booklet, pp. 29, 30.) And by the same simple process it can be shown that hedging contracts on the Exchange for the purpose suggested are absolutely useless.

Many a colono and central has doubtless been made to believe that these two transactions on the Exchange, one the purchasing of futures and the other buying them back at the time specified in the contracts for delivery, which require the payment of commissions to his broker, were absolutely necessary for him to secure with certainty the price sugar was then bringing for delivery at the time specified in the Exchange contract of sale.

Let us again suppose that one who sells his May futures at \$5.00, instead of waiting until May to buy back his contract, concludes that he will buy in March when the price has dropped to \$4.75. If

it continues to drop until it reaches \$4.50 in May, when he is ready to deliver his sugar, he pays on the Exchange 25 cents less than the price at which he sold, and therefore clears a margin of 25 cents; but he loses 50 cents in May on his actual sale of sugar in the cost and freight market, and his net loss therefore is 25 cents.

If, however, when he buys in March the price has increased to \$5.25 and it continues to rise until it reaches \$5.50 in May, in buying back and canceling his contract on the Exchange he pays 25 cents more than the price at which he sold and loses on the Exchange 25 cents, but he makes 50 cents on his sale of actual sugar in the cost and freight market, and his net gain, therefore, is 25 cents. *But the transaction possesses all the elements of chance incident to a sale or purchase upon the Exchange for the sole purpose of speculation.*

In fact, in hedging it is not the Exchange transaction that stabilizes the deal in actual sugar, but it is the ownership and sale of the sugar that makes certain the result of the Exchange transaction.

(b) *Selling sugar in the cost and freight market and buying futures on the Exchange.*

This is merely suggested in Lamborn & Company's booklet (Booklet, p. 20), and no problem is worked out to illustrate such a transaction. It is there said:

When futures are selling at a discount you are also presented with an opportunity. Under these circumstances, when the discount

has become sufficiently attractive, your chance for profit lies in selling your sugar and replacing by buying futures. By doing this you secure cash for your sugar; and if the market rises as anticipated, you approximate the same result as though you had held your sugar.

If such a transaction is called a hedge it is nevertheless nothing other than a straight speculation in futures. If the price goes up the transaction *on the Exchange* will be profitable, because the owner of the sugar buys futures at a lower price than he will pay; but if he should misjudge the market, and it should continue to decline, he would lose, because he pays a greater price than he will receive when he sells; and in either case "*you approximate the same result as though you had held your sugar,*" though the writer is careful to make such suggestion only in connection with a rise in prices.

Of course, if the market should continue on a decline he could sell and avoid further loss, just as is done in connection with any other speculative transaction on the Exchange.

2nd. Buying Sugar.

The Meinrath Brokerage Company manifestly has a large clientage, and is seeking a larger one, of buyers of refined sugar; and they have issued a pamphlet entitled "An outline of the opportunities, advantages, and manner of operating in refined sugar futures on the New York Coffee and Sugar Exchange," a copy of which is filed by defendants with the affidavit of Mr. Charles D. Budd, jr., a

member of the firm. This pamphlet, like that issued by Lamborn & Co., is not printed in but constitutes a part of the record; and a copy is furnished each member of the court. Hedging contracts from the standpoint of the buyers of sugar are described in this pamphlet under the following headings: "Hedging to determine a loss," "Hedging to determine a profit," "Hedging to eliminate a purely speculative profit or loss," and "Hedging to protect against future sales of manufactured products," there being two examples under the last heading, one of a buyer and the other of a seller:

As the first two illustrations, deserve the more careful attention, consideration will first be given to the third, fourth, and fifth examples.

(1) The third (Hedging to eliminate a purely speculative profit) is the seller's hedging contract, to insure that he will get the prevailing future price for his sugar, reversed. Green & Co. on May 1 buy in the cost and freight market 2,400 bags of granulated sugar at \$8.00 per hundred pounds, to be delivered in July. At the same time they sell on the *Exchange* the same quantity at the same price. If the price advances \$1.00 by July they will lose a dollar per hundred on the Exchange contract, because it will cost them that much more to buy their contract back than the price at which they sold, but they can realize on the sugar actually bought \$1.00 per hundred profit, which will cancel the loss.

But here it is apparent that if Green & Company are manufacturers of candy or preserves or canned

goods, and want to use their sugar and not sell it, they will lose just a dollar a hundred in the gamble on the Exchange. So if they are wholesale grocers they will doubtless sell their sugar in the trade at a price based on the price which they had contracted to pay, and will suffer the same loss.

Suppose, however, the price declines \$1.00; then G. & Co. will make \$1.00 per hundred on their exchange contract, because they will buy their contract at \$7, but their actual sugar will be worth \$1.00 less than they paid for it. If they have sold their sugar in the trade, or the goods, into the manufacture of which the sugar has entered, on the basis of \$8.00 per hundred pounds for sugar they will clear \$1.00 per hundred; but this profit is derived from the purely speculative contract on the Exchange, just as is the loss if the price advances.

(2) In the fourth example G. & Co. are assumed to be canners of peas, and they want to sell in January and February for future delivery peas in the canning of which sugar will be used that is bought for delivery in May. It is based on the assumption that there is no market outside the Exchange in which sugar can be bought for delivery in May, which is assumed not to be the fact in the other examples given. Anyway, it is not strictly a hedging contract, because G. & Co. are *compelled* to make it, as it is supposed that it is the only way they can purchase sugar. They buy on the Exchange the May futures at \$8.00. If the market advances to \$9.00 they sell their contract at that price, making \$1.00 per hundred pounds, and take

the \$9.00 and buy sugar in the cost and freight market at that price, thus obtaining the same quantity of sugar their Exchange contract called for at \$8.00.

If the market recedes \$1.00 they lose that much in the Exchange transaction, because to cancel their contract they sell at \$1.00 less than they paid; but they buy the sugar in the cost and freight market at \$7.00, and therefore get the same quantity as that called for in their contract on the Exchange. But the same result would follow if they made a *bona fide* contract for the sugar to be delivered in May; and they would not have to pay a commission on two transactions.

(3) The fifth example is one of pure speculation. There G. & Co. are candy manufacturers; and after they have made a quantity of candy they fear that the price of sugar will decline; and they therefore sell on the Exchange an amount of sugar equivalent to that used in making the candy, for delivery on a near-by future date, at, say, \$7.90. If contrary to expectation the market advances G. & Co. must run to cover by buying immediately the same quantity they have sold, suffering, of course, some loss. But if their judgment is correct and the market declines, say, to \$7.00, then G. & Co. can buy at that price and cancel their contract at a profit of 90 cents. And it is said: "There would unquestionably have been some declines in the candy market, but Green Bros. would have protected themselves against these declines, at least to the extent they had hedged on the Exchange. Of course, they were not obliged to cover by buying

in at seven dollars, but could have held off longer in anticipation of further decline." And so could any other speculator upon the Exchange.

So a manufacturer of shoes or saddles could "protect" himself on the Sugar Exchange in the same way, and to the same extent, if he expected the price of leather to decline. And whether he would lose or make would depend upon whether the price of sugar would advance or decline.

(4) The first example is "Hedging to determine a loss." There G. & Co. on May 1 purchase from a refiner a quantity of granulated sugar for July delivery at \$8.00. Later in the month the market declines to \$7.50. They fear it will decline further, and hedge by selling the quantity they contracted for at \$7.45 on the Exchange for delivery in August. If they are mistaken and the market advances *they must cover at once* by buying the same quantity, or lose to the extent of the advance. If the market declines to, say, \$6.50 for July delivery and they can succeed in buying at \$6.42 for August delivery, they will make on the Exchange transaction \$7.45 minus \$6.42, or \$1.03; but they will sell their real sugar at a loss of \$8.00 minus \$6.50, or \$1.50. Their net loss, therefore, will be \$1.50 minus \$1.03, or 47 cents per hundred. Here is again the assumption that G. & Co. do not want to use the sugar, or have not already sold it, if jobbers, which assumption is generally not true unless they are purely speculators; and if they are speculators they don't want the sugar at all.

(5) The second example is "Hedging to determine a profit." G. & Co. buy from a refiner on May 1 for July delivery at \$8.00. The market soon advances to \$9.00; and G. & Co. want to make sure that they will realize the dollar profit. They can then make the \$1.00 per hundred pounds by selling the sugar actually bought, but they must have it in their business in July. They therefore sell the same quantity on the Exchange at \$9.00. The result, whether the market continues to advance or recedes, is thus stated:

In case of further advances, Green & Co. will buy in on the Exchange, with neither profit nor loss, or perhaps a slight loss. They will take the full benefit of the advance in selling the 2,400 bags which are delivered to them by the refiner at \$8.00.

If the market recedes from \$9.00, returning to \$8.00, Green & Co. will cover by buying three lots (800 bags each) realizing a profit of 100 points or \$1.00 per bag. They will still have the 2,400 bags to be delivered by the refiner, which cost \$8.00 and are salable on a market of \$8.00. It is quite apparent that the profit of 100 points which was determined by the Exchange hedge has actually been established and realized.

This illustration applies only to jobbers, because it is said, "They could, of course, resell the 2,400 bags, but bear in mind that this firm *must have that quantity of sugar for actual distribution to their trade in the month of July.*" If they have sold the sugar in the trade on the basis of \$8.00 and the price con-

tinues to advance, they lose on the Exchange transaction, and realize no profit from the advance in the cost and freight market. If the price declines they make a profit on the Exchange transaction, just as any other speculator does. *In fact this is not a hedging transaction for so-called protection, but purely a speculative transaction to realize a profit. And as with every other speculative or gambling contract on the Exchange, G. & Co. make a profit if the price of sugar goes the right way and lose if it goes the wrong way.*

Professor Seligman in his "Principles of Economics," which is quoted from by Mr. Gilmour, witness for defendants (R. p. 109), gives another form of hedging. There an English miller is supposed to purchase in February wheat at Chicago which can not be delivered to him in England until September. The price is then 90 cents per bushel, and fearing that it may decline before delivery he sells on the Exchange the same quantity he has bought. When the wheat arrives in September the price has declined to 75 cents, and by buying the same amount on the Exchange to cancel his contract he makes 15 cents per bushel, which offsets his loss on the wheat actually purchased. Of course if in the meantime the price had advanced he would have lost in the transaction on the Exchange, which would have been offset by the gain in the price of the wheat actually bought. In other words, such a form of hedging insures that the purchaser will get the wheat at the market price at the time of its delivery plus the

broker's commission on the two transactions; and the same result could have been accomplished without paying the commission by stipulating in the contract that the purchaser would pay the market price prevailing when delivery is made.

Considering all the examples given by Lamborn & Company and Meinrath Brokerage Company and Professor Seligman, the obvious thing is that the hedger has made, or contemplates making, the *bona fide* contract in the *real sugar market*, where *sugar* is *actually* bought and sold. He doesn't have if a seller, and doesn't want if a buyer, the sugar at the present time; but will have it or will want it at a future date. He claims he is not a sugar speculator, but wants "protection." And from these examples it appears there are a diversity of desires upon the part of these sellers and purchasers. One buyer wants it to be made certain that he will get the sugar at the then prevailing price for a specified future delivery; another wants a guarantee that he will get it at the market price prevailing at the time of delivery; another wants, if the price starts downward, to be guaranteed that he will not suffer any further loss; and another wants, if the price has gone up, to be guaranteed that he will not lose the then speculative profit by a decline before the date of delivery; and still another, whose sugar has been converted into candy, wants to make in a transaction on the Exchange enough to offset any depreciation in the value of his candy, should the price of sugar decline. The wants of the sellers are about the same,

but are figured out in the reverse way. Those who want it made certain at what price they will sell or purchase sugar on the delivery date can easily obtain what they desire without any use of the Exchange. The one can make a simple contract to take and the other to accept so much sugar at a certain time at the stipulated price. The others who want "protection" are purely speculators. They have in their business the same risks as many other business men, who produce the raw material, or who as manufacturers or jobbers buy supplies needed in the future. The manufacturer of furniture must buy his supply of lumber in advance and sell his goods for future delivery. The manufacturer of shoes must do the same with reference to the leather he needs and the shoes he makes. And the foundryman has to buy his pig iron months in advance, and contract for the future delivery of his product. The furniture maker, the shoe manufacturer, and the foundryman had as well go upon the Sugar Exchange and speculate to save himself against a probable loss, or assure a profit, as the manufacturer of candy or the jobber of sugar. The only difference is that the article dealt in is not in the line of the furniture or shoe manufacturer or foundryman; but the hedging contract of the candy maker is just as distinct from the real contract for sugar as the foundryman's contract on the Exchange would be from his real contract for pig iron.

But the protection is more imaginary than real. As above demonstrated, if the buyer has purchased

sugar for future delivery and the price has declined and he wants to protect himself against further loss by selling, or if he has bought and the price advances and he wants to be sure to realize the profit arising from the advance by then selling, he has to put himself absolutely in the hands of his broker. If when he sells the price starts or continues upward he must buy immediately and sell again when it starts downward. Absolute protection would require a transaction every time the price fluctuated on the Exchange, which, as will be hereafter shown, is practically every day. So at the end of the game the broker's commission would probably about equal the value of the sugar.

Moreover, during periods of excitement on the Exchange it is exceedingly unsafe for a producer of sugar to anticipate its future sale by selling futures on the Exchange. For illustration, take the period from February 1 to February 14 last; and suppose that a colono on February 1 expected to have 500 tons of sugar in September, and sold on the Exchange 500 tons for September delivery to secure the prevailing price of September futures. When the sale was made on February 1, the colono was required to put up a margin of \$2,500. Because of the increases in price (see Table R. p. 18) the amounts of margin the colono was compelled to have on deposit from day to day during that period were as follows:

February 2.....	\$3,844
February 3.....	3,508
February 5.....	3,000

February 6	\$4, 976
February 7	5, 524
February 8	6, 868
February 9	9, 444
February 10	14, 484
February 13	25, 684
February 14	22, 592

The value of the 500 tons of sugar on February 1, 1923, was \$43,008, and on February 13, \$66,192, which was an advance of \$23,184. Therefore, if the additional margin of \$11,200 had not been put up when called on the 13th his sale would have been canceled, his deposit of \$14,484 appropriated, and he would have been charged with an additional sum of \$8,700.

Under such conditions instead of endeavoring to relax the strain upon the *bona fide* traders who have entrusted their interests to the members of the Exchange, every step taken is designed for their own protection regardless of how greatly it may increase the burden upon those whom they represent. Thus while the required margin on February 1 was on the basis of \$250 per lot, because of the advance the basis was increased to \$400 on February 14, to \$500 on February 16, and to \$750 on April 20.

2. Contracts Admitted to be Purely Speculative.

With reference to such contracts it is said in the answer:

That another large part of said future trading in said exchange room consists of contracts made by or for so-called speculators, persons who have capital and make a study of trade conditions affecting prices, and endeavor to

forecast the future prices of sugar and profit thereby, through the making of such contracts for future delivery. (R. p. 41.)

Mr. Diercks also says:

In addition to these actual business transactions in connection with the movement and distribution of the crop, which I believe that even the Government representative will concede to be strictly legitimate and proper, there are transactions in futures on the floor of the Exchange by persons of large capital who study the sources of information with regard to consumption and production and forecast the probable course of prices of the commodity. Such persons make contracts for future delivery on the Exchange with the purpose and intention of taking advantage of the change in price in the event that their forecast of conditions is correct, running the risk of grave loss in the event that their forecast is incorrect. Speculation of this sort is of a most useful character. (R. p. 69.)

And again:

It is true that in addition to these men of capital and intelligence who thus speculate in futures there is some trading in futures by persons without the same degree of capital or intelligence who make future sales or purchases for the excitement and gamble, and that this class of speculation is undesirable and harmful to those who indulge in it, and usually results in a loss to the person so trading, but this class of transactions is in my opinion from my knowledge of transactions

on the Exchange relatively immaterial in volume. (R. p. 70.)

It is not pretended that any member of either of these classes, when he makes a contract of sale or purchase, has any intention to deliver or receive actual sugar. The former trade with the "intention of taking advantage of the change in price" and the latter trade and purchase "for the excitement and gamble." Both classes are concerned only about the margin of profit or loss.

According to the allegations of the answer and the sworn statement of Mr. Diercks, the president of the Exchange, all transactions on the Exchange belong to the foregoing classes.

It therefore is subject to absolute demonstration that practically all of the contracts, if not every contract, on the Exchange is unlawful and unenforceable under the rules of law laid down by this court, and recognized by all courts as the law governing such transactions.

As heretofore said, defendants justify the existence of the Exchange and Clearing Association because of the opportunity it gives for hedging, or "protection," as they call it. They concede that the other classes of contracts described in their answer, and in the statement of the president, *are made for speculation*. Then let it be supposed that every contract made on the Exchange during a day's session are made for hedging by those who intend to cancel them by subsequent contracts on the Exchange, and who have made, or intend to make, collateral *bona fide* contracts outside the Exchange.

In *Irwin v. Williar*, 110 U. S. 499, 508, this court said:

The generally accepted doctrine in this country is, as stated by Mr. Benjamin, that a contract for the sale of goods to be delivered at a future day is valid, even though the seller has not the goods nor any other means of getting them than to go into the market and buy them; *but such a contract is only valid when the parties really intend and agree that the goods are to be delivered by the seller and the price to be paid by the buyer; and, if under guise of such a contract, the real intent be merely to speculate in the rise or fall of prices, and the goods are not to be delivered, but one party is to pay to the other the difference between the contract price and the market price of the goods at the date fixed for executing the contract, then the whole transaction constitutes nothing more than a wager, and is null and void.*

And in the syllabus the principle decided is thus stated:

If under guise of a contract to deliver goods at a future day the real intent be to speculate in the rise or fall of prices, and the goods are not to be delivered, but one party is to pay to the other the difference between the contract price and the market price of the goods at the date fixed for executing the contract, the whole transaction is nothing more than a wager, and is null and void.

When a broker is privy to such a wagering contract, and brings the parties together for the very purpose of entering into the illegal

agreement, he is *particeps criminis*, and can not recover for services rendered or losses incurred by himself in forwarding the transaction.

This expression of the court was quoted with approval in *Clews v. Jamieson*, 182 U. S. 461, 489-490, and the court there further said:

As a sale for future delivery is not on its face void, but is a perfectly legal and valid contract, it must be shown by him who attacks it that it was not intended to deliver the article sold, and that nothing but the difference between the contract and the market price was to be paid by the parties to the contract. And the fact that at the time of making a contract for future delivery the party binding himself to sell has not the goods in his possession and has no means of obtaining them for delivery, otherwise than by purchasing them after the contract is made, does not invalidate the contract. *Hibblewhite v. McMorine*, 5 M. & W. 462. Parke, Alderson and Maule, barons, before whom the case was heard, were unanimously of this opinion.

In order to invalidate a contract as a wagering one, both parties must intend that instead of the delivery of the article there shall be a mere payment of the difference between the contract and the market price. *Pearce v. Rice*, 142 U. S. 28; *Pickering v. Cease*, 79 Illinois, 328. In the latter case it was stated:

"Agreements for the future delivery of grain or any other commodity are not pro-

hibited by the common law, nor by any statute of the State, nor by any policy adopted for the protection of the public. What the law does prohibit, and what is deemed detrimental to the general welfare, is speculating in differences in market values. The alleged contracts for August and September come within this definition. No grain was ever bought and paid for, nor do we think it was ever expected any would be called for, nor that any would have been delivered had demand been made. What were these but 'optional contracts' in the most objectionable sense; that is, the seller had the privilege of delivering or not delivering, and the buyer the privilege of calling or not calling for the grain, just as they chose. On the maturity of the contracts they were to be filled by adjusting the differences in the market values. Being in the nature of gambling transactions, the law will tolerate no such contracts."

And in *Pearce v. Rice*, 142 U. S. 28, 40, it was remarked:

"But the evidence before us is overwhelming to the effect that the real object of the arrangement between Hooker & Company and Foote was, not to contract for the actual delivery, in the future, of grain or other commodities—which contracts would not have been illegal (*Pickering v. Cease*, 79 Illinois, 328, 330)—but merely to speculate upon the rise and fall in prices, with an explicit understanding from the outset that the property apparently contracted for was not to be delivered, and that the trans-

actions were to be closed only by the payment of the differences between the contract price and the market price at the time fixed for the execution of the contract."

A contract which is on its face one of sale, with a provision for future delivery, being valid, the burden of proving that it is invalid, as being a mere cover for the settlement of "differences," rests with the party making the assertion.

As shown by all the illustrations heretofore given, in no hedging contract upon the Exchange is an actual delivery of the sugar contemplated, but it is intended that the contract shall be canceled by a corresponding sale or purchase, and that there will be paid or received the margin between the sale and purchase prices. Therefore, during the entire day upon the Exchange everyone who makes a hedging contract to protect a sale, or contemplated sale, and everyone who, on the other hand, makes a contract to protect a purchase, or contemplated purchase, intends precisely the same thing; that is, each one intends to cancel his sale or purchase by a subsequent purchase or sale of the same amount of sugar and the payment of the advance or decline in price. There is absolute agreement upon that subject in the minds of everyone operating on the Exchange.

In a case which involves a transaction or even a series of transactions between certain brokers on the Exchange, as were the facts in *Clews v. Jamieson*, it may be difficult to prove that an actual delivery was not contemplated when such transaction or trans-

actions were had, and the presumption that a delivery was actually intended may not be overcome; but such presumption is absolutely destroyed when it is conceded that every contract during the day on the Exchange is of such character that no delivery could have been contemplated by either party in the making of any of them.

Now, if such is the law relating to contracts upon the Exchange when all of them are hedging transactions, a fortiori must the same rule apply when some of the contracts for the day are made by pure speculators, as described in the answer and Mr. Dierck's statement, and all the others are hedging contracts.

The fact that an exceedingly small proportion, considerably less than 1 per cent, of the contracts are consummated by actual deliveries can not prevent the application of the principles of law above stated, because, as explained by Lamborn & Company, they are caused by one speculator driving an opponent into a corner to obtain an advantage over him, when neither of them in fact contemplated making or accepting an actual delivery when the transaction was had.

However, this case does not turn upon the question whether any class of the contracts made upon the Exchange are technically legal, but whether the course of operations upon the Exchange restrains interstate commerce, which will be fully considered hereafter.

The advances in prices of spot and raw sugar from February 1st to the date of the filing of the petition were very largely, if not entirely, the result of speculative operations on the Exchange; and were not justified, or caused by the existing or prospective supply of, or demand for, sugar.

The immediate cause of the filing of the petition on April 9, 1923 was the general and rapid advance in the prices of spot sugar and sugar futures, beginning early in February and becoming particularly marked about February 13th. May futures advanced on the Exchange from \$2.35 on February 1st to \$5.97 on April 16th, or a total advance within sixty trading days of \$2.32 (Pet. R. p. 20); while spot sugar advanced from \$3.52 on February 1 to \$5.89 on April 16, a total advance of \$2.37 (Diercks, R. p. 76). The theory of the petition is that those advances, and the corresponding advances of futures for other months, were not justified by the actual conditions existing in the sugar market, but were at least very substantially the result of pure speculation on the Exchange.

However, the bearing that this increase in the price of sugar and the evidence relating thereto have upon the real question at issue should be kept in mind. Though it were found that a shortage in sugar did exist, which justified an increase in prices, such fact would not be determinative of the case. The question is, Does the Exchange as *organized and operated* unduly enhance or reduce the price of sugar? Do

manipulations and speculations on the Exchange at times substantially retard the effects of natural economic laws, and at other times unduly stimulate and enhance them? In other words, are prices substantially affected by speculations on the Exchange, (1) by increasing or diminishing the results that would naturally flow from actual market conditions, or (2) by the creation in the minds of speculators imaginary conditions which excite them to greater activity, or (3) by the stimulation of trading from causes which have no relation to the supply of and demand for sugar? It is apparent, therefore, that the causes of the fluctuations in the prices of sugar immediately preceding the filing of the petition are not themselves the issue; but the evidence relating thereto has a very material bearing upon the real issue, and as such should be carefully studied.

On February 8 spot sugar was \$4.01 and March futures were \$4.07; May, \$4.07; July, \$4.17; and September, \$4.23. On the 9th the prices increased as follows: Spot, 20c; March futures, 21c.; May, 25c.; July, 25c.; and September, 23c. On the 10th prices increased, spot, 6c.; March futures, 15c.; May, 29c.; July, 40c.; and September, 45c. The 11th was Sunday, and the 12th was a holiday; and on the 13th the increases over Saturday's prices were, spot, \$0.99; March futures, \$1.00; May, \$1.00; July, \$1.00, and September, \$1.00; which brought the prices to, spot, \$5.26; March futures, \$5.43; May, \$5.61; July, \$5.82; and September, \$5.91. (Pet. R. p. 20; Statement of

Diercks, R. p. 76.) The advance in futures on the 13th no doubt would have been greater had there not existed the rule which prohibited a greater increase on the Exchange in one day than 1 cent per pound.

From February 8 to 15 the prices of refined sugar charged by four of the refineries in New York advanced \$1.00 by one, \$1.25 by two, and \$1.30 by one. (Pet. R. p. 21.)

One contention in the answer is that the leap of \$1.00 per hundred pounds in the price of all futures, and of 99c. per hundred on spot sugar on the 13th was due to the publication on February 12 of an estimate of the sugar crops made by the Department of Commerce. (R. pp. 54, 55.)

But this contention is not consistent with the claim subsequently made in the answer, "that the recent advance in the prices of sugar is wholly due to the judgment and opinion of those who deal in said commodity and make a study of the conditions surrounding its production and consumption." (R. p. 61.)

According to the rules in the charter one object of the Exchange corporation is "to acquire, preserve, and disseminate useful and valuable business information" in regard to the sugar trade.

Mr. Gilmour, a witness for defendants, in speaking of how prices are reached upon the Exchange, says: "The supply and prospective demand, weather conditions, crops, economic conditions, etc., are all studied and considered, and it is the majority

opinion which prevails, whether rightly or wrongly, which makes the price, frequently far in advance of the events which had been anticipated and discounted." (R. p. 104.) And it is claimed, not only by those giving testimony in this case, but by economists who attempt to justify the existence of exchanges, that those who operate thereon carefully investigate the conditions of both production and consumption, and that the prices reflect a composite judgment reached by them based upon such original investigations.

Every operator on the Exchange had had access to every source of information that was open to the Department of Commerce; and nothing appeared in its report with which the members of the Exchange were not familiar. *Then, if the Exchange performs such a useful function in forecasting the future and fixing prices for future delivery, why should the statement issued by the Department of Commerce have produced such agitation in trading on the Exchange?*

But what was the information contained in this estimate of the Department of Commerce, which the answer alleges was "an adequate cause for the abrupt and sudden rise in prices on February 13, 1923"? Those parts of that estimate which are quoted in the answer as constituting the adequate cause are as follows:

In 1921-1922 the world's sugar consumption was 500,000 tons greater than production, and the prospects are that it will be 700,000 tons greater in 1922-1923. If these prospects

materialize, the heavy accumulated stocks of the end of the 1921-1922 season will have given way by the end of 1922-1923 to a carry over below the pre-war normal figure.

* * * * *

This year starts with another 4,000,000-ton Cuban crop in sight, a big crop in Java, and a greatly increased production in Europe. But various decreases elsewhere, notably in the United States, have brought the world production only 125,000 tons higher than it was last year, to supply consumption needs estimated at 350,000 tons more than in 1922, and 725,000 tons larger than production.

* * * * *

That the estimated production for 1922-1923 was 18,308,000 tons, and the estimated consumption 19,035,000 tons. (R. pp. 54, 55.)

To an intelligent reader who knows something about sugar—the very subject with which every operator on the Exchange is specially familiar—the facts stated meant that the Department of Commerce estimated that there would be 125,000 more tons of sugar produced this year than there were last year, but that there would be 350,000 tons more consumed; that the consumption would exceed the production by 725,000 tons; and that therefore the carry-over would be less than it usually was during the pre-war period. And a glance at the report would have shown that the estimated carry-over was 476,000 tons.

The same information was contained in the headlines and comment of the Journal of Commerce, in its issue of February 10, from which the following is quoted in the statement of Mr. Diercks:

WORLD SHORTAGE OF SUGAR IS FORECAST—DEFICIENCY FOR 1923 PLACED AT 250,000 TONS—DEPARTMENT OF COMMERCE SAYS CONSUMPTION NEEDS ARE 725,000 TONS ABOVE PRODUCTION, WITH 476,000 TONS CARRY-OVER.

The newspaper article opened with this sentence:

Washington, Feb. 9th. A World sugar shortage this year of more than 250,000 tons was officially predicted to-day by the Department of Commerce. (R. pp. 74, 75.)

That is, it was estimated that there would be 476,000 tons of sugar more than the world would need. And because there would not be a million tons the world could not consume instead of 476,000 tons, the world woke up on Wednesday, February 14, to find that consumers had to pay a cent a pound more for sugar than was being paid the day before. In other words, there was extorted from the people of the United States about \$2,000,000 per week, not because there was any prediction of an actual shortage in sugar, or that there would come a day within the period of time about which anyone would undertake to prophesy, when one would want sugar and there would not be an abundance to meet his every want, but because the margin of excess would be only 476,000 tons.

Previous experience, especially the experience of *but* years before, taught that the expectation of

an excess of consumption over production would stimulate production for the ensuing year, and would quickly depress consumption; and it was well known that sugar taken from the factories for the year 1921 and 1922 had increased 2,482,000 tons over that taken during the previous year and was 1,180,000 tons in excess of consumption before the war, which clearly indicated that a large stock was being held in reserve by the middlemen and consumers. And therefore not only was the estimated increase of 350,000 tons in consumption not justified, but the probabilities were that it would fall below what it had been the previous year.

Moreover, there was no new information contained in the statement issued by the Department of Commerce. There was not a fact stated therein that had not for some time been known to every man operating on the Exchange or connected with the sugar industry. Mr. Gilmour, an expert witness for defendants, in his argument attempting to justify the advance in the prices of sugar, quotes the following from the issue of the "International Sugar Journal" for December, 1922:

PRODUCTION AND CONSUMPTION.

Last month we published Willett & Gray's preliminary estimates of the 1922-23 world's sugar crops. They revealed, as that eminent firm of statisticians themselves remarked, that there is very little change indicated for any of the important sugar crops of the world, particularly those of cane sugar, which total

practically the same as those of 1921-22. In the Continental United States the output of beet and cane is expected to be some 335,000 long tons less than last year; on the other hand, Europe is expected, bar accidents, to increase the beet sugar output by 644,000 long tons.

The net result of all the sugar crops is estimated by Willett & Gray as at most an increase of some 362,000 tons. Unfortunately, the world is faced by the fact that as compared with last December, the carry-over into 1923 is to be less by the huge amount of one million to one and a half million tons. *Give therefore a maintenance only of the 1922 demand for consumption, a shortage will develop during 1923 which is bound to send the price of sugar up still higher.* There are, it is true, those who argue that the 1922 consumption is not a true one, but is the result of the restocking of invisible supplies which had diminished during the abnormal post-war years, and that therefore 1923 will show a decreased consumption. But there is apparently little or no evidence to support this view, while the contrary is indicated by the fact that the trade distributing channels generally are too well stocked. More probable is it that the Old World is getting out of the restrictive groove in which the war landed it and is seeking a bigger per capita consumption, while the New World, so far as the United States is concerned, has developed a permanently increased demand for sugared drinks to take the place of the prohibited alcoholic beverages.

*The result is that in 1923 sugar consumption will have overtaken and passed production. The producer will hence be in receipt of a much more remunerative price for his sugar, which will *inter alia* give him the means to enlarge his output, either by laying down more efficient machinery or else by increasing his cane crops and milling a large output of cane. (R. p. 96.)*

Therefore, as far back as December, 1922, the trade generally was thoroughly familiar with the expectation that consumption of sugar would very substantially exceed production.

Another significant fact is thus incidentally stated by Mr. Gilmour:

To state that these "future" operations were simply a matter of paper speculation is entirely to try to cloud the question, for the largest sellers at all times were those who represented actual producers, or those who had bought actual sugar for arrival in the United States at a future date and sold "futures" on the Exchange as a hedge. (R. p. 97.)

This conclusively shows that both the producers and the purchasers of sugar and their representatives were all the time satisfied with the prevailing prices, and knew of no reason justifying an advance, or they would not have been hedging to secure the existing price.

Therefore the establishment of the claim that the report of the Department of Commerce was the cause of the advances in sugar prices would be a

condemnation of the Sugar Exchange. If the report imparted information with which the members of the Exchange were not familiar, the claim that the Exchange performs a useful function in securing advance reliable information with reference to the conditions of sugar crops is conclusively refuted. There was nothing in the report which was not known to or could not have been easily ascertained by any member of the Exchange. If it was the *form* and not the *substance* of the report that caused the orgy of trading and the consequent advances in prices, the Exchange certainly has no proper place in the economic life of the country. It may be that the report was "an *adequate* cause for the abrupt and sudden rise in prices," considering the organization of and the operations on the Exchange and its influence upon prices, but it certainly was not a *sufficient* cause to have produced the least disturbance in the market *in the absence of a piece of machinery of the nature of the Exchange*. Moreover, if the headlines and introduction of the report were seized upon by the owners of large quantities of raw sugar or by speculators as an excuse for and a means of producing a panic on the Exchange resulting in the abrupt and sudden rise in prices, the existence of an instrumentality that can be, and is, so manipulated is a menace to the public welfare and violative of the Anti-Trust Act, and it should be suppressed.

Estimates of the Cuban crop made some time subsequent to the sudden and abnormal advance in

February are cited as a justification of the high price of sugar. For instance, in the petition it is alleged that "the estimates of four recognized authorities of the crop for 1922-1923 are as follows: Guma-Mejer (Cuba), 3,800,000; Willett & Gray (U. S.), 4,000,000; Department of Commerce (U. S.), 4,000,000; H. A. Himely (Cuba), 4,102,857. (R. pp. 18, 19.) In the answer it is admitted—

that the estimates of four of the recognized authorities, to wit, Guma-Mejer, Willett & Gray, Department of Commerce, and H. A. Himely, on the crop for 1922-1923 were, as of the date when they were made, as stated in complainant's bill, but they allege that since the date of said estimates two of said recognized authorities have revised and reduced their estimates, and that Guma-Mejer on April 25th, 1923, further reduced his estimate from 3,800,000 tons to 3,670,000 tons, and that H. A. Himely, on April 20, 1923, reduced his estimate from 4,102,857 tons to 3,735,000, or approximately a quarter of a million tons. (R. p. 53.)

However, *these revised estimates could have had nothing whatever to do with the agitation on the Exchange and sudden skyrocketing of prices from February 9 to 14.* They are cited, and were probably made to serve, as an excuse for keeping up the prices and as justifying advances up to the filing of the petition.

DAILY FLUCTUATION OF PRICES.

That the general condition of the sugar industry and the existing or prospective relationship between

supply and demand were not responsible for the prices of sugar as published from day to day, but that they were the result of manipulations and speculations on the Exchange, is conclusively shown by a study of the daily change in prices. The petition contains a table showing the "Closing prices on New York Coffee and Sugar Exchange for each trading day from February 1, 1923, to April 16, 1923." (R. p. 20.) With reference to this table it is said in the answer:

* * * these defendants admit that the table therein contained showing the closing prices on the New York Coffee and Sugar Exchange for each trading day from February 1, 1923, to April 16, 1923, is substantially correct, and they allege that said trading for the most part was subsequent to the said publication by the United States Department of Commerce. (R. p. 55.)

This table is here reproduced, adding just before the price each day for each delivery month the amount of advance or decline from the previous day's price. The plus sign indicates an advance from the previous day and the minus sign a decline.

Closing prices on New York Coffee and Sugar Exchange for each trading day from February 1, 1923, to April 16, 1923.

	March delivery.	May delivery.	July delivery.	September delivery.
Feb. 1.....	\$3.56	\$3.65	\$3.76	\$3.84
2.....	+ \$0.13 3.69	+ \$0.12 3.77	+ \$0.12 3.88	+ \$0.12 3.96
3.....	- .02 3.67	- .02 3.75	- .02 3.86	- .03 3.93
5.....	- .05 3.62	- .04 3.71	- .04 3.82	- .04 3.89
6.....	+ .24 3.86	+ .16 3.87	+ .17 3.89	+ .18 4.07
7.....	+ .10 3.96	+ .08 3.95	+ .06 4.05	+ .04 4.11
8.....	+ .11 4.07	+ .12 4.07	+ .12 4.17	+ .12 4.29

Closing prices on New York Coffee and Sugar Exchange for each trading day from February 1, 1923, to April 16, 1923—Continued.

	March delivery.		May delivery.		July delivery.		September delivery.	
Feb. 9.	+\$0.21	\$4.28	+\$0.25	\$4.32	+\$0.25	\$4.42	+\$0.23	\$4.46
10.	+.15	4.43	+.29	4.61	+.40	4.82	+.45	4.91
13.	+.10	5.43	+.10	5.61	+.10	5.82	+.10	5.91
14.	-.18	5.25	-.21	5.40	-.42	5.40	-.41	5.50
15.	-.36	4.89	-.38	5.02	-.22	5.18	-.22	5.28
16.	+.18	5.07	+.20	5.22	+.17	5.35	+.21	5.40
17.	+.21	5.28	+.23	5.45	+.23	5.58	+.23	5.72
19.	-.15	5.13	-.14	5.31	-.14	5.44	-.15	5.57
20.	+.07	5.20	+.06	5.37	+.06	5.50	+.07	5.64
21.	+.26	5.46	+.28	5.65	+.27	5.77	+.23	5.87
23.	+.08	5.54	+.08	5.73	+.06	5.83	+.07	5.94
24.	-.22	5.32	-.22	5.51	-.24	5.59	-.24	5.70
26.	-.22	5.10	-.28	5.23	-.27	5.32	-.29	5.41
27.	-.02	5.08	-.04	5.19	-.07	5.25	-.07	5.34
28.	+.40	5.48	+.34	5.53	+.37	5.62	+.37	5.71
Mar. 1.			+.12	5.65	+.12	5.74	+.11	5.82
2.			-.07	5.58	-.09	5.65	-.08	5.74
3.			+.17	5.41	-.17	5.48	-.17	5.57
5.			+.06	5.47	+.07	5.55	+.05	5.62
6.			+.10	5.57	+.11	5.66	+.14	5.76
7.			+.01	5.58	-.02	5.64	-.03	5.73
8.			+.17	5.75	+.20	5.84	+.22	5.95
9.			+.09	5.66	+.08	5.76	+.08	5.87
10.			+.03	5.69	+.04	5.80	+.03	5.90
12.			+.17	5.86	+.19	5.99	+.19	6.09
13.			+.10	5.76	+.10	5.89	+.09	6.00
14.			+.02	5.78	+.03	5.92	+.03	6.03
15.			+.01	5.79	+.01	5.91	+.01	6.04
16.			+.05	5.74	+.04	5.87	+.04	6.00
17.			+.02	5.76	+.05	5.92	+.05	6.05
19.			+.03	5.73	+.02	5.90	+.01	6.04
20.			+.14	5.59	+.13	5.77	+.12	5.92
21.			+.09	5.50	+.08	5.69	+.08	5.84
22.			+.18	5.68	+.19	5.88	+.20	6.04
23.			+.13	5.55	+.13	5.75	+.14	5.90
24.			+.11	5.44	+.09	5.66	+.10	5.80
26.			+.08	5.52	+.07	5.73	+.07	5.87
27.			+.14	5.66	+.15	5.88	+.18	6.05
28.			+.03	5.63	+.05	5.83	+.06	5.99
29.			+.01	5.62	+.01	5.82	+.02	5.97
Apr. 2.			+.05	5.57	+.05	5.77	+.05	5.92
3.			+.01	5.58	+.01	5.78	+.01	5.93
4.			+.04	5.62	+.04	5.82	+.04	5.97
5.			+.13	5.75	+.14	5.96	+.14	6.11
6.			+.01	5.76	+.01	5.97	+.02	6.13
7.			+.00	5.76	+.00	5.97	+.02	6.11
9.			+.12	5.88	+.14	6.11	+.17	6.28
10.			+.03	5.91	+.03	6.14	+.01	6.29
11.			+.01	5.92	+.01	6.15	+.01	6.30
12.			+.06	5.86	+.09	6.06	+.10	6.20
13.			+.00	5.86	+.00	6.06	+.01	6.21
14.			+.01	5.87	+.00	6.06	+.00	6.21
16.			+.10	5.97	+.11	6.17	+.10	6.31

Mr. Dierck's statement contains a table showing the prices of spot sugar each day from February 1 to April 21. That table is here reproduced, and there is added or subtracted the amount that would equalize the price with the price the same day for the nearest futures up to April 16, the last date given in the table appearing in the petition. For illustration, on February 1 the price for spot sugar was \$3.52, which plus 4 cents equals \$3.56, the price of March futures; on February 3 the price for spot was \$3.77, which minus 10 cents equals \$3.67, the price of March futures. After February the nearest futures were for May.

1923.		1923.	
February	1.....	March	7.....
	2.....		8.....
	3.....		9.....
	5.....		10.....
	6.....		12.....
	7.....		13.....
	8.....		14.....
	9.....		15.....
	10.....		16.....
	13.....		17.....
	14.....		19.....
	15.....		20.....
	16.....		21.....
	17.....		22.....
	19.....		23.....
	20.....		24.....
	21.....		26.....
	23.....		27.....
	24.....		28.....
	26.....		29.....
	27.....	April	1.....
	28.....		2.....
March	1.....		3.....
	2.....		4.....
	3.....		5.....
	5.....		6.....
	6.....		7.....

1922.		1923.	
April 9.....	\$5.76+12	April 16.....	\$5.89+8
" 10.....	5.89+2	" 17.....	6.02
" 11.....	5.89+3	" 18.....	6.27
" 12.....	5.89-3	" 19.....	6.28
" 13.....	5.89-3	" 20.....	6.14
" 14.....	5.58+29	" 21.....	6.27

(R. p. 76.)

There are two striking features shown by these tables:

First, the daily variation of the prices; and, second, that there was not a uniform advance, but at times a marked decline. The line of prices is as variable as the tracing of a seismograph recording the tremors of an earthquake.

The pressure from supply and demand is constant, or swings slowly from one side to the other. The supply of an article does not become exhausted or materially depleted within a day or a week unless it is limited in quantity and confined to one locality and is subjected to the ravages of fire, flood, or other destructive agency. And it is wholly abnormal for a demand for an article to be greatly increased overnight. *Certainly there was nothing unusual happening to the sugar crops, or the supply of sugar on hand between February 1 and February 14, or more particularly between February 10 and 13. Nor, so far as the record discloses, had there been one pound added to the rate of consumption or to the demand for sugar. Between February 10th and 13th, who had tried to purchase a pound of sugar and could not get it? Who had ordered spot sugar, or made an order for March, May, July, or September delivery and had been met*

State; and the officers of these corporations, who are sued both as individuals and in their representative capacity, and all the other members thereof, who were made parties defendant, not by name, but through said corporations and their officers. The petition alleges a violation of both the first or conspiracy section of the Sherman Anti-Trust Act, and those provisions of the Wilson Act of February 12, 1913, which prohibit combinations in restraint of trade when an importer is a party thereto. And the object of the petition is to prevent defendants from further engaging in and carrying out a combination and conspiracy in restraint of interstate and foreign trade and commerce in raw and refined sugar. The petition states the sources from which the United States draws its supplies of sugar, and the quantities derived from each of these several sources for the years 1920, 1921, and 1922, and describes the operations on the Exchange. (R. pp. 12-17.) It is alleged that the volume of transactions relating to refined sugar are inconsequential as compared to the dealings relating to raw sugar; that such raw sugar as is actually delivered in consequence of transactions on the Exchange is stored in bonded warehouses licensed by the Exchange corporation; that actual transactions on the Exchange in an overwhelming majority of instances do not involve, and are not intended to involve, the delivery of the amount of raw sugar purported to be sold thereby; that such transactions are completed by matching, ring settlements, or payments of differences, and by

clearing through the Clearing Association where settlements are reached by matching, payments of differences, etc.; that on an average about 75 per cent of all transactions are settled through the Clearing Association; that of the total number of contracts cleared through the Association in November, 1922, $\frac{18}{100}$ of 1 per cent were consummated by delivery; of the total number of contracts cleared in December, 1922, $\frac{23}{100}$ of 1 per cent were so consummated; of the contracts of January, 1922, $\frac{10}{100}$ of 1 per cent, and of February, 1923, $\frac{2}{100}$ of 1 per cent, and of March, 1923, $\frac{10}{100}$ of 1 per cent were so consummated; that by reason of the large number of firms and corporations with which its members are connected, or which transact their business in accordance with the rules of the Exchange, it has become the largest commercial center for transactions relating to sugar in the world; that while but little sugar is actually delivered in settlement of the numerous transactions on the Exchange, yet such transactions are regarded as binding obligations and as establishing the price of sugar for the day for the date of delivery; and the fluctuations of prices are carefully tabulated and immediately transmitted by wire to all the markets of the world, and are published in the press of the United States and of many foreign countries, and the prices thus established and published are taken by those who own and sell sugar and those who purchase sugar as the basis for prices in actual transactions; and thus by their speculations and gambling in sugar futures defendants control the prices which the

refiner pays for raw sugar, and also the prices which dealers and consumers pay for refined sugar; that the prices thus fixed are established upon a wholly speculative and artificial basis, without proper regard to the conditions which, but for said unlawful and uneconomic operations, would control said prices; and that said Exchange and Clearing Association serve no legitimate or useful purpose in the marketing in interstate and foreign commerce of raw and refined sugar, but serve only as a means of contracting and speculating with reference to supplies of sugar that in many instances do not exist, which is done for the purpose of manipulating the prices of raw and refined sugar without regard to conditions actually obtaining in the industry, and regardless of the law of supply and demand, and solely for illegitimate gambling or speculative profits. (R. pp. 12-16.)

There is then given statistics taken from recognized authorities showing the supply and estimated supply of sugar for 1920-21, 1921-22, and 1922-23, and the relative production of sugar in Cuba for 1921-22 and the estimated production for 1922-23, and the stocks on hand in the several ports of the United States on April 7-11, 1922 and 1923; and it is alleged that there is no economic justification for a sudden or appreciable increase in the prices of raw or refined sugar. (R. pp. 14-19.) A table is then given showing the prices of raw sugar for March, May, July, and September deliveries, 1923; from February 1 to April 16, 1923; and also a table showing quotations of refined sugar by five refineries

situated in New York on February 1, 8, 15, March 15, 27, 29, and April 5 and 12, 1923; and it is then alleged that the rapid increases there shown in the prices of sugar were the direct result of a combination and conspiracy between the two corporations mentioned and the officers and members of those corporations and their clients or principals, who, by means of reported purchases and sales of sugar, sought to and did establish artificial and unwarranted prices not governed by the law of supply and demand, but based wholly on speculative dealings, not involving the delivery of the quantities of sugar represented thereby, but carried on for the purpose and with the effect of unduly enhancing the prices of sugar. (R. pp. 19-21.) It is further alleged that since February 7, 1923, there has been an orgy of speculation in raw sugar through the instrumentality of the Exchange and the Clearing Association; that enormous quantities of raw sugar, greatly in excess of the quantities customarily dealt in and more than the total stocks of raw sugar then in existence, have been the subject of fictitious or paper sales; that the transactions on the Exchange during February, 1923, though a short month with two holidays, aggregated 1,515,050 tons, as compared with 362,850 tons in January, while during February only 300 tons were actually delivered as the result of transactions on the Exchange; and that during March, 1923, transactions purporting to involve the purchase and sale of raw sugar were had on the Exchange to the extent of 937,900 tons, while de-

liveries amounted to only 1,250 tons. (R. p. 22.) Also a table is given showing for the months of November and December, 1922, and January, February, and March, 1923, the number of contracts made, open contracts from the previous month, contracts cleared through the Clearing Association, those upon which actual deliveries were made, and the contracts matched; and it is alleged that as the result of these fictitious or paper transactions the prices of raw sugar and also of refined sugar have been increased on an average of considerably more than \$2.00 per hundredweight; and that the speculative operations described, and which were carried on with a common understanding and for the purpose and with the intent of unduly enhancing the prices of both raw and refined sugar, and which had accomplished that object, constitute and are an unlawful combination and conspiracy in restraint of interstate and foreign trade and commerce in raw and refined sugar, and have resulted, and will continue to result unless restrained by the court, in the continued enhancement of the prices of raw and refined sugar, and also in a diminished demand therefor, thereby lessening the traffic therein in interstate and foreign commerce. (R. pp. 23-25.) And it is prayed that it be adjudged and decreed that the by-laws, rules, and regulations of the defendant corporations, in so far as they relate to sugar, their adoption by said corporations and individual defendants, and the concerted action of said defendants in carrying out said rules and regulations,

constitute a combination and conspiracy in restraint of interstate and foreign trade and commerce in raw and refined sugar in violation of the Act of Congress of July 2, 1890, known as the Sherman Anti-Trust Law, and also of Section 73 of the Act of August 27, 1894, as amended by the Act of February 12, 1913, known as the Wilson Tariff Act, contrary to public policy and detrimental to the people of the United States and in derogation of their common right; and that defendants be perpetually enjoined from maintaining and operating, and from engaging in the operation of, the Exchange and Clearing Association in so far as they deal or purport to deal in sugar; from establishing, maintaining, operating, or engaging in the operation of any plan or scheme of like character, or designed, or intended to establish artificial prices of sugar, or to substantially affect the prices of sugar by artificial means, or the necessary result of which would be to so establish and affect the prices of sugar; that the defendants be enjoined from publishing or making public any price or prices of raw or refined sugar as being or purporting to be the market price of sugar as established by or observed in the transactions on the Exchange; and from attempting to establish the prices named in the transactions on said Exchange as the market prices of sugar to be observed in bona fide transactions actually involving the purchase, sale, and delivery of sugar; and that they be also enjoined from entering into or permitting to be entered into any transactions on the Exchange or elsewhere involving or

purporting to involve the purchase, sale, and delivery of sugar, unless the person purporting to make such sale has in his possession or under his control a supply of sugar adequate to meet the requirements of such transaction, and the person purchasing or purporting to purchase shall in good faith intend to buy and pay for such sugar and accept delivery thereof as soon as same can be made. (R. pp. 25-28.)

ANSWER.

The answer admits the organization of both corporations, but corrects some errors made in the petition with reference to the parties who are officers of and control said corporations. (R. pp. 34-35.) With reference to operations upon the Exchange and through the Clearing Association the answer contains the following important statements and admissions:

It designates two classes of transactions engaged in by the members *which are not made upon the Exchange*. Both of these classes consist of actual sales of sugar. It then describes the third class of transactions, *which are made upon the Exchange*. It says that many of the members, either in person or as brokers or agents, make with other members of the Exchange purchases and sales of coffee and sugar for future delivery, said contracts providing that the seller shall deliver in New York the coffee or sugar covered by the contract upon any date of the named month that he shall select; "*that the entire trading in said exchange room consists of making or*

transferring contracts for future delivery"; that all orders received by members to buy or sell must be executed in the open market under the Exchange rules and only during the hours for regular trading, and both the buyers and sellers are personally present in the city of New York when the contracts are made; that many of the members of the Exchange are bankers, refiners, producers, users, and manufacturers of sugar, etc., who find it to their business advantage to be members of the Exchange, but who are not active on the floor thereof, and many more of the members act only as agents and receive from others on consignment shipments of coffee and sugar to be sold by them as agents, *which they protect by future contracts on the Exchange*; and others of said members act only as agents or brokers in the making of future contracts with other members of the Exchange; and that all contracts for future delivery provide for the delivery of negotiable warehouse receipts which represent the actual commodity and are of only such warehouses as are approved and licensed by the Exchange. (R. pp. 38, 39.)

In describing more particularly the transactions upon the Exchange the answer says that in trading for future delivery in the exchange room during every year many millions of tons of sugar are bought and sold for future delivery, "*and as respects upwards of three-fourths of the sugar covered thereby, said contracts are fulfilled and settled without any delivery of any warehouse receipts, but are settled by off-sets or clearances through the Clearing Association, and*

the payment of differences in market price, or they may be settled by so-called "ring" settlements, which are provided for by the rules of said Exchange and that practically (all) said remaining future contracts are performed or completed during the months specified for delivery, by delivery by sellers to buyers of said warehouse receipts." (R. p. 40.) It is further alleged that a large part of the total volume of trading in sugar for future delivery in the exchange room as above described consists of contracts made by producers of sugar, refiners, merchants, and other consumers, "who make such contracts entirely for the purpose of insuring themselves against price fluctuations, respecting sugar either owned, sold, or purchased by them, for the purpose of merchandising or shipping to consuming markets or refining, or using in manufactured products in which sugar is used, and that in most cases such contracts for future delivery are fulfilled by the making of counter contracts to offset the ones originally made; the actual sugar which such future contracts were based upon being sold or disposed of to refiners or others. That another large part of said future trading in said exchange room consists of contracts made by or for so-called speculators, persons who have capital and make a study of trade conditions affecting prices, and endeavor to forecast the future prices of sugar and profit thereby, through the making of such contracts for future delivery"; that the Exchange for the information of its members and their customers gather information from all parts of the world in regard to crops and visible supply of sugar

and current prices prevailing in different sugar markets of the world; "*that a very large proportion of all the world's trading in sugar for future delivery takes place in the exchange room of the Exchange,*" but that an exchange is also maintained in New Orleans, and formerly exchanges were maintained at London, Paris, and Hamburg. (R. pp. 40, 41.)

It is also alleged that the rules of the Exchange limit the variation on any day of the price of sugar futures for any month to 1 cent per pound in the price, and the board of managers are given the power to suspend trading whenever such conditions arise that in their judgment the best interests of the Exchange will be thereby promoted, and it is asserted that the purchase and sale of sugar for future delivery upon the Exchange is a distinct benefit to all producers and consumers and those engaged in commerce in sugar and to the public in general "in that it enables carriers of sugar to protect themselves against price fluctuations by the making of 'hedging' contracts upon such Exchange"; and it is further declared that the prices prevailing in future trading at any time are the expression of the preponderance of opinion amongst interested traders as to the future course of the prices of sugar, and that they ordinarily express the normal operation of the natural law of supply and demand; and that the trading in futures in the exchange room and the operations of the Exchange "are substantially similar to those of exchanges dealing in other commodities, such as the Board of Trade of the City of Chicago, dealing in

grain; the New York Cotton Exchange, dealing in cotton; the New York Produce Exchange, dealing in grain and other produce; and that all of said exchanges, as well as this defendant, perform a great and important economic function in connection with the distribution of the products in which they deal." (R. pp. 42, 43.)

With reference to the functions of the Clearing Association, it is alleged that it "does not make any purchases or sales of coffee or sugar, and that it does not deal in coffee or sugar except as an agency in clearing contracts of members of the said Exchange and of the said Clearing Association, *and that its clearance of said contracts is simply an offsetting of contracts of certain members against the contracts of certain other members, and guarantees of performance, and that in such respect it constitutes a mere convenience, avoiding undue waste of time and effort, and affords a protection by its requirements of suitable margin to protect contracts*"; and that the only exception is that it has the power under its charter to buy or sell coffee or sugar in the market for the purpose of protecting itself against a default by a member; but that in the entire existence of the Clearing Association very few such purchases or sales have ever been made. (R. pp. 43, 44.)

In answering specifically the charges in the petition relating to the transactions on the Exchange it is said, "*They admit that transactions on the Exchange in a great majority of cases do not involve the delivery of the amount of raw sugar sold thereby*"; but they

deny that such transactions are not intended to involve the delivery of such sugar, or that such sugar is not actually sold thereby, and allege that all transactions on the Exchange contemplate the actual delivery of sugar, and that any buyer can compel its delivery. And "Defendants admit that such transactions are frequently completed on said Exchange by offsets, sometimes called matching, ring settlements, and payment of differences and by clearing through defendant, Clearing Association, where settlements are reached by offsets, sometimes called matching, payments of differences, etc., without delivery of the amount of sugar stated in the contracts," but they allege that all such settlements constitute offsets, and their validity has been established by the decisions of the Supreme Court of the United States and the Court of Appeals of the State of New York. (R. p. 48.) "They admit that on an average of upwards of 75 per cent of all transactions are cleared through defendant, Clearing Association, and that the percentages of the total number of contracts cleared through said Association for the months therein referred to are correctly stated in said paragraph IV of complainant's bill, except that the decimal point is incorrectly placed two places to the left in each of such cases. They admit that the Exchange has become and is the largest commercial center for transactions relating to sugar in the world. They admit that while but little sugar is actually delivered in consequence of the numerous transactions on the Exchange, yet the

purchases at any particular time are regarded as and are binding obligations and as establishing the price of sugar for the day for delivery at such time, and they admit that the course of the dealings, the fluctuations in prices up and down, are carefully tabulated and immediately transmitted by wire to all the markets of the world, and especially to the markets of the United States, and are published in the press of the United States and of many foreign countries"; but they say such transmittal is done by the Western Union Telegraph Company and not by defendants. (R. pp. 48, 49.) "They admit that the prices thus established and published are taken by those who own and sell sugar and those who purchase sugar as the basis for prices in actual transactions in very many cases, but they deny that there is any compulsion or obligation on such persons to take such prices as the basis for actual transactions, and they deny that they or either of them speculate or gamble in sugar for future delivery or control the prices of raw sugar paid by the refiner, or the prices of the wholesaler or jobber, or the prices of the retailer, or the prices paid by consumers throughout the United States." (R. p. 49.)

In answering the section of the petition in which the statistics relating to the condition of the sugar supply are recited the answer goes into considerable detail and undertakes to show that the actual and estimated supply of sugar, as shown by statisticians, are less than those given in the petition, and that the

conditions are more unfavorable than as indicated therein. (R. pp. 51-55.)

It is denied that the price movements for raw sugar were immediately reflected in the prices of refined sugar, but it is admitted "that the price of refined sugar, and also of 'spot' sugar, advanced contemporaneously with the advances in the price of 'futures' on the Exchange, and that the table set forth in the bill of complaint showing the refined sugar quotations of five of the principal refiners of the United States out of the sixteen or more refiners in the United States is substantially correct, and a comparison of the two tables shows that the advances over the same periods of the refiners' prices at times exceeded the advances on the Exchange of future prices"; and it is alleged that since the filing of the bill the prices of both refined sugar as fixed by the refiners and the prices of "futures" as traded in on the Exchange have contemporaneously advanced. (R. p. 56.)

The answer also admits that during February, 1923, the transactions on the Exchange aggregated approximately 1,515,050 tons, as compared with 362,850 tons in January, and that during the month of February only 300 tons were actually delivered; but it is alleged that the transactions during February were in future contracts for various subsequent months, which did not call for deliveries in February, while the February deliveries were made pursuant to contracts made in previous months; and that contracts

maturing in February were always comparatively small in amount. They also admit that the transactions on the Exchange during March, 1923, involved 937,900 tons, while deliveries amounted to only 1,250 tons; but they allege that said contracts were for future deliveries, while the actual deliveries were on contracts made during previous months; and it is denied that such transactions were otherwise illegal. (R. p. 59.)

It thus appears from the pleadings that there is no substantial disagreement as to the character and number of transactions had upon the Exchange, and the functions of the Exchange and the Clearing Association; and that the dispute relates entirely to the effect of such transactions upon the prices and volume of sugar moving in interstate and foreign commerce, and whether or not as a legal deduction the operation of said Exchange and Clearing Association in the manner described is violative of the Anti-Trust Act.

PROCEEDINGS.

Because of the importance of the action the Attorney General filed the certificate provided for in the expediting act of February 11, 1903 (32 Stat. 823; 36 Stat. 854). (R. p. 119.) And notice having been given, application was made to the four circuit judges of the Second Judicial Circuit for a temporary injunction in accordance with the prayer of the petition. Many affidavits and exhibits thereto were filed both in support of and in opposition to the application; and the court after hearing argument denied the

application. It was then agreed by all the parties that the court might finally determine the case upon the record as presented, treating all the affidavits and exhibits as evidence regularly taken and offered. And thereupon the court dismissed plaintiff's petition, from which action an appeal was prosecuted to this court. (R. pp. 172-173.)

ASSIGNMENT OF ERRORS.

Plaintiff assigned the following errors:

1. The court erred in refusing to adjudge and decree that the by-laws, rules, and regulations of the defendant corporations in so far as they relate to sugar, their adoption by said corporations and individual defendants, and the concerted action of defendants in carrying out said rules and regulations, constitute a combination and conspiracy in restraint of interstate and foreign trade and commerce in raw and refined sugar in violation of the Act of July 2, 1890, known as the Sherman Anti-Trust Act, and also in violation of Section 73 of the Act of August 27, 1894, as amended by the Act of February 12, 1913, known as the Wilson Tariff Act.

2. The court erred in not perpetually enjoining the defendants and each of them from the further operation of the Exchange and Clearing Association in so far as sugar is dealt in on said Exchange and Association and from engaging in the operation of any plan or scheme of like character or designed for a like purpose.

3. The court erred in not adjudging and decreeing that the adoption of the by-laws, rules, and regula-

tions of the defendants New York Coffee and Sugar Exchange (Inc.) and New York Coffee and Sugar Clearing Association (Inc.), which are designed to promote transactions in sugar of the character herein described, and the acquiescence in said by-laws, rules, and regulations by the members of said Exchange and Association, and the concerted action of said members under the same whereby transactions unlimited in number are made upon said Exchange and cleared through said Clearing Association purely speculative in character, and in which the seller does not own or expect or intend to acquire sugar for actual delivery or the purchaser does not have any present or future need for sugar, or intend or expect to accept an actual delivery of sugar, constitute a combination in restraint of interstate and foreign commerce in violation of said Anti-Trust Act of July 2, 1890, and of said Section 73 of said Wilson Tariff Act of August 27, 1894, as amended by the Act of February 12, 1913.

4. The court erred in not perpetually enjoining defendants from further permitting transactions upon said Exchange in which the seller does not own or expect or intend to acquire sugar for actual delivery, and transactions in which the purchaser has no present or future need for sugar and does not intend or expect to accept an actual delivery of sugar, and all other transactions of a speculative character.

5. The court erred in not perpetually enjoining defendants from engaging in transactions whereby artificial prices of sugar are created or prices are

affected by artificial means and without regard to the economic law of supply and demand as specifically prayed for in the petition.

6. The court erred in dismissing the petition and not granting the relief prayed for therein. (R. pp. 173-175.)

BRIEF AND ARGUMENT.

I.

Nothing but futures are bought and sold on the Exchange, and there are practically no deliveries made pursuant to such transactions.

As shown above, such fact is substantially admitted in defendants' answer, but because of its importance the following evidence is cited to emphasize the admission. Mr. Diercks, the president of the Exchange, says:

Trading in sugar is practically confined on the floor of the Exchange to trading in contracts for future delivery. Practically no contracts for immediate delivery, known as "spot contracts," take place there, although members of the Exchange make such contracts for immediate delivery with each other which are not reported to the Exchange. Any private trading in futures, however, by members of the Exchange is forbidden by rules of the Exchange, as the purpose of the Exchange is to maintain an open and untrammelled market in futures, where prevailing prices in futures are all recorded for the subsequent use and benefit of producers, dealers, and consumers of sugar. (R. p. 68.)

There are sixteen sugar refineries in the United States, which belong to ten companies. This means that all raw sugar sold in the United States must be purchased by only ten consumers of the raw product. Mr. Babst, president of the American Sugar Refining Company; Mr. Post, president of the National Sugar Refining Company; Mr. Lowry, of the firm of R. Atkins & Company, a copartnership; Mr. Jamison, of Arbuckle Brothers, a copartnership; and Mr. Smith, president of the Federal Sugar Refining Company, which concerns operate large refineries of sugar in New York, all testify that said concerns obtain their supply of raw sugar *by purchases from producers made through brokers, and not on the Exchange*. (R. pp. 120, 121, 123, 124, 126.) Mr. Lowry also filed an affidavit for defendants, in which he said that—

While we do not purchase our requirements of raw sugar on the Exchange, we have on two occasions sold a moderate quantity of futures on the Exchange, with the intention of delivering against these sales certain raw sugar that we held. (R. p. 86.)

Mr. W. S. Pardoner, who testifies for the defendants, says the Savannah Sugar Refining Company, of which he is vice president and secretary-treasurer, never buys sugar on the Exchange, but “has frequently protected itself against fluctuations in the value of its sugar by selling contracts for future delivery on said Exchange” (R. p. 118); Mr. J. H. Kempner, president of the Imperial Sugar Company, which operates a refinery at Sugarland, Texas, says his

company has "used the Exchange in a limited way to hedge purchases of raw sugar at Cuba until same could be refined and sold" (R. p. 118); and Mr. Bell, treasurer of the Warner Sugar Refining Company, says that "the warehouses owned by the company are licensed by the Sugar Exchange as warehouses for sugar"; and that "the company has found the New York Coffee and Sugar Exchange a useful medium for making contracts for future deliveries, which enables the company to maintain a constant refiner's margin and protects itself against fluctuations in prices of sugar" (R. p. 117). Therefore, *of the eight concerns engaged in the refining of sugar whose practices are proven none have purchased any sugar through the Exchange* unless it be the Warner Company; and Mr. Bell carefully refrains from stating what kind of contracts it makes upon the Exchange, or how they are settled.

There are also in the record statements of Arthur G. Hoffman, vice president of the Great Atlantic & Pacific Tea Company, a corporation conducting 7,500 chain stores in 2,187 cities located in 30 States of the United States; John A. Badenoch, vice president of Park Tilford, a corporation engaged in the manufacture and sale of candy and in the general grocery business; and Jacques R. Haas, vice president of Loft (Inc.), a corporation engaged in the manufacture and sale of candy, to the effect that none of these concerns buy their supplies of sugar through the Exchange. (R. pp. 128-130.) Each of twenty-six defendants who are members of the Ex-

change files an affidavit in which he says: "All of the contracts in sugar for future delivery made by me or my firm with another member *are cleared through the Clearing Association.*" (R. pp. 84-85.) This means that none of their transactions are settled by actual deliveries.

As to the proportion of actual deliveries to the number of transactions on the Exchange, the answer admits that upwards of 75 per cent of all transactions *are cleared through defendant Clearing Association*; and that the percentages of the contracts cleared through the Association for the months of November and December, 1922, and January, February, and March, 1923, stated in the petition are correct except that the decimal point is incorrectly placed to the left in each of such cases. (R. pp. 48, 49.) It is alleged in the petition that of the total number of contracts cleared through the Association in November, 1922, .0018 per cent were consummated by delivery; that of the total contracts so cleared in December, 1922, .0023 per cent were so consummated; of the contracts in January, 1923, .0010 per cent; in February, 1923, .0002 per cent; and in March, 1923, .0010 per cent were so consummated. (R. p. 14.) Whether the decimal point is correctly placed or not, what is meant is, that the number of deliveries made through the Exchange in November was $\frac{18}{1000}$ of 1 per cent; in December, $\frac{23}{1000}$ of 1 per cent; in January, $\frac{10}{1000}$ of 1 per cent; in February, $\frac{2}{1000}$ of 1 per cent; and in March, $\frac{10}{1000}$ of 1 per cent of the number of transactions had thereon during such

months, respectively. (Walter Lewis, R. p. 166.) This corresponds with what is said by Lamborn & Company in their booklet, which will be hereafter noticed.

The allegation in the petition that "on an average about 75 per cent of all transactions are cleared through defendant Clearing Association" (R. p. 14) is subject to misconstruction. This statement is based on the table appearing on page 23, which shows the number of contracts made during the months of November and December, 1922, and January, February, and March, 1923, and the number disposed of and the manner of their disposition. It will be observed that 4,011 contracts were carried over from October, and each month a large number remained undisposed of. The relative percentages of the contracts cleared through the Association to those *made* during the months mentioned, as shown by said table, are as follows: For November, 108.8 per cent; for December, 86.7 per cent; for January, 82 per cent; for February, 95.4 per cent; and for March, 96 per cent. To the contracts cleared should be added those matched. And the relative percentages of *deliveries* on the Exchange to the contracts *made* during those months were, for November, $\frac{20}{100}$ of 1 per cent; for December, $\frac{34}{100}$ of 1 per cent; for January, $\frac{15}{100}$ of 1 per cent; for February, $\frac{10}{100}$ of 1 per cent; and for March, $\frac{13}{100}$ of 1 per cent. This is ascertained by calculation from the figures given in the table.

II.

The by-laws and rules controlling the Exchange and Clearing Association are designed to promote speculative transactions and to prevent deliveries of sugar through the Exchange. And when contracts made upon the Exchange are read in the light of its by-laws and rules, it is apparent that an actual delivery is rarely, if ever, contemplated.

The contract for the sale of raw sugar required by the by-laws and rules of the Exchange reads as follows:

OFFICE OF
New York.

Sold for
To

50 tons of 2,240 lbs. each of Sugar in bags, deliverable from licensed warehouse in the port of New York, between the first and last days of -----, inclusive. The delivery within such time to be at seller's option upon seven, eight, or nine days' notice to the buyer. The sugar to be of any grade or grades as specified in Section 88a at the price of ----- cents per lb. in bond, net cash for Cuba Centrifugal 96 degrees average polarization outturn with additions or deductions for other grades according to the rates of New York Coffee and Sugar Exchange (Inc.), existing upon the afternoon of the day previous to the date of the notice of delivery.

Either party to have the right to call for margins as the variations of the market for like deliveries may warrant, which margins shall be kept good. This contract is made in view of and in full accordance with the By-

Laws, Rules, and Conditions established by New York Coffee and Sugar Exchange (Inc.).

(Written across the face is the following:)

For and in consideration of one dollar to ----- in hand paid, receipt whereof is hereby acknowledged; ----- accept this contract with all its stipulations and conditions. (Charter, etc., of Exchange, pp. 48, 49.)

The contracts for duty-free raw sugar and for granulated sugar are similar in form and contain the same provision. (Charter, etc., pages 49, 50, and insert.)

The by-laws, rules, and conditions established by the Exchange corporation are expressly made a part of these contracts, and therefore they can be fully understood only when read in connection with those by-laws, rules, and conditions. Rule 1 of Sugar Trade Rules provides that "By-laws and rules governing transactions in coffee which do not conflict with the Sugar Trade Rules shall apply to sugar in the same manner as to coffee." (Charter, etc., p. 114.) Consequently the rules hereinafter cited apply to sugar, although sugar may not be expressly mentioned in them.

With reference to the quantity of sugar bought or sold, Rule 3 of Sugar Trade Rules provides that "All offers to buy or sell sugar for future delivery, unless otherwise specified, shall be understood to be for fifty tons, and offers to buy or sell in larger quantities shall be in multiples thereof." (Charter, etc., p. 114.)

The first two sentences of Trade Rule No. 12 read as follows:

All contracts for the future delivery of coffee shall be binding upon members, and of full force and effect until the quantity and quality of the coffee specified in such contract shall have been delivered, and the price specified in said contract shall have been paid. Nor shall any contract be entered into with any stipulation or understanding between the parties at the time of making such contract, that the terms of said contract as specified in Section 88 of the By-Laws are not to be fulfilled, and the coffee delivered and received in accordance with said section. (Charter, etc., pages 82-83.)

If the contract provided for were read solely in the light of this part of Rule 12, it would appear to be a *bona fide* one. But the subsequent conditions and limitations contained in the rule must be carefully considered in order to understand exactly the purposes of the Exchange and how the several contracts made thereon may be manipulated. Immediately following the provisions above quoted, and a part of the same rule, is the following:

Provided, however, that any person holding a contract against another, corresponding in all respects, except as to price, and date, with one held by the other party against him, may close or cancel both by giving notice in writing to the opposite party, at any time before notice of delivery; or where a "Ring" may be formed, all

parties thereto shall be compelled to settle upon the terms hereinafter prescribed.

All "Ring" settlements shall be made at the prices first posted by the Superintendent on the day on which the "Ring" is made, and bills on the "Ring" or direct settlements shall be rendered by 11 a. m. on the day after that on which such "Ring" or settlement shall have been made, and must be paid by 2 p. m. on the day on which they are rendered, under a penalty of one-tenth of 1 cent per pound. On Saturdays all settlements must be made by 11.30 a. m.

The party making a "Ring" shall notify all the parties thereto, and get their initials in acknowledgment, leaving with each a copy thereof. If the "Ring" is not complete he shall, on the same day, notify all the parties thereto. The contract of the earliest date shall, in all cases, be the one considered settled (Charter, etc., page 83).

Rule 15 provides:

Where a transfer of a contract or a "Ring" has been verbally agreed upon by all parties, and all have been notified, it shall be in force from the time of the acknowledgment, and can not be broken by the failure of any party thereto (Charter, etc., p. 84).

Therefore if a seller or a purchaser has a contract executed by the other party for the same amount of sugar and for delivery in the same month, wherein they occupy opposite positions, he has a right to offset such contract by paying the difference in the price

specified therein. And, say A has sold fifty tons to B for future delivery in August, and B has sold to C, and C has sold to D, and D has sold to E, and E has sold to A, each fifty tons of sugar for delivery in the same month, then on notice as provided for in the rules, a ring may be formed and all of the contracts canceled by paying the differences in the prices stipulated in the contracts.

To facilitate settlements of contracts otherwise than by delivery, *and for no other purpose*, the Clearing Association was organized; and it is expressly provided in the last paragraph of Rule 3 of the Exchange (Charter, etc., pp. 74, 75): "*Unless otherwise stated at the time, all bids and offers and transactions resulting from such bids and offers shall be understood to be for clearance through the New York Coffee and Sugar Clearing Association (Inc.)*"

Section 12 of the By-Laws and Rules of the Clearing Association reads as follows:

The Association may accept (and by such acceptance the liability of the Clearing Member whose contract is accepted by the Association towards the other party shall be terminated and the Association substituted therefor) contracts offered to it by Clearing Members for clearance, and by such acceptance shall, in place of either party to a contract so accepted and toward the other party thereto, assume the obligations imposed thereby and succeed to and become vested with all the rights and benefits accruing therefrom, assuming to the buyer the position of seller and to the seller the position of buyer as the case may be.

Each Clearing Member shall make daily reports to the Association of all contracts for future delivery of coffee or sugar made by such member on the New York Coffee and Sugar Exchange (Inc.), with other Clearing Members in accordance with rules and regulations prescribed by the Directors.

Each report shall be accompanied by a check to the order of the Association, or draft upon it, for the amount necessary, after allowing for amounts theretofore paid on account, to mark outstanding contracts set forth in the report to the last closing bid prices on the New York Coffee and Sugar Exchange (Inc.), for coffee and sugar deliveries in the months mentioned in such contracts, respectively. (Marking a contract to the closing bid prices is the payment or receipt of the difference between the value of the contract at the contract price and at the closing bid price.) There shall also be attached to and be delivered with such report, a check for any original margin that may be required, as prescribed in Sections 14, 15, 16, and 17 of these By-Laws.

All contracts reported to the Association as above provided shall be deemed accepted by it, unless the parties thereto are notified in writing to the contrary by the Association on or before 10.30 a. m. of the following day, up to which time the Association has the right to refuse to accept any contract reported to it as aforesaid. (By-Laws and Rules of Association, pp. 13-14.)

Therefore the Association becomes the owner of the several contracts assigned to it, and they become extinguished merely by offsetting or matching, the assignor being paid, or required to pay, the difference according to whether he gained or lost in the day's transaction.

That the brokers who constitute the membership of the Exchange may not in the least be hampered in settling the contracts made by them during the day, *although they make them as agents and are not the real owners thereof*, by Rule 19 (Charter, etc., p. 92) it is provided:

Any member who may find that he holds, for account of his correspondents, contracts, both of sale and purchase, in the same month, which offset each other, shall be authorized to offset and settle such contracts, and to substitute therefor his own name, and he shall be responsible to his principals for the strict fulfillment of such contracts, and shall be liable to them for all damage or loss they may sustain by reason of such substitution.

But no rule has been adopted which provides a method for measuring or proving the damages that might result to the principal because of the substitution of the broker's name for his, and as a practical matter he is without redress. *Thus each member of the Exchange exercises absolute control over every contract made by him, and can settle them by matching, or by making or entering into rings, without consulting his principal, and even over his principal's protest.*

But suppose a member who sells, or one who purchases, determines to require a delivery of the sugar. It then becomes important to consider the process necessary to compel such delivery. The notice required is thus described in Rule 16:

When notice of delivery on the part of the seller, or demand of coffee by a buyer (when he has the option so to do) is required by contract, it shall be given by the party furnishing the coffee in the one case, and the buyer in the other case, to the party requiring said notice, either five, six, or seven days prior to the date of delivery, said notice to be given before 10.30 a. m. of the day of issuance (excepting as hereinafter provided). No notice shall be issued on a Saturday.

Notice may be issued by the seller on the last notice day of the month if a sale is made for delivery in the current month, but said notice must be delivered to the buyer within 15 minutes after the sale is made.

No notice shall be issued for over five days, unless either six or seven days shall be necessary to make the delivery fall on a business day. In no case shall a notice be issued that will allow less than three business days for transfer, including the day of its date.

The party receiving the notice may transfer the same to a subsequent party, and it may be given from one transferee to another. Every transfer must be made within twenty minutes, and every person receiving the notice shall indorse upon it the actual time he re-

ceives it. Any party who may fail to forward such notice within that time shall be liable to have the notice returned to him before 4 p. m. of that day. All transfers shall be made within the Exchange hours except as hereinafter provided, the notice becoming a short notice with the close of the Exchange on the day of its issue, and all differences thereon shall be paid as provided in the second paragraph of Rule 12, for payment of ring settlements. When sold as short notice, the payment shall be made direct, and the price made equal to that at which it was first issued.

Transferable Notices issued on the last notice day of the month may be transferred from one transferee to another until one hour after the close of the Exchange, becoming a "short notice" after that hour. (Charter, etc., pages 84-85.)

It is also provided that the issuers of a transferable notice shall have it officially stamped at the Exchange before circulation; and that should the office of a party to whom notice is to be given be closed, it shall be good service to give the notice to the Superintendent of the Exchange. Some modifications of these requirements as applied to sugar appear in Rule 12 of Sugar Trade Rules (Charter, etc., p. 117), and are as follows:

The initial presentation of a transferable notice for the delivery of sugar shall be made before 11 a. m. of the day of issuance. No notice shall be issued on a Saturday.

No notice shall be issued for over seven days, unless eight or nine days shall be necessary to make the delivery fall on a business day.

The party with whom a regular transferable notice shall finally lodge shall, within one hour thereafter, notify the issuer thereof appointing a licensed weighmaster to check the weights and also a sampler and chemist in accordance with Sugar Trade Rule 11, so that the samples may be drawn at the time of weighing. The failure of the receiver to notify the deliverer, as herein prescribed, shall subject him to the additional costs, if any, entailed in sampling after weighing.

And the following is the form provided for a transferable notice and conditions of acceptances:

TRANSFERABLE NOTICE FOR RAW SUGAR.

----- o'clock.

NEW YORK, 192-.

Z, X & Co.:

Take notice that on ----- shall deliver you 50 tons of 2,240 lbs. each in ---- bags of Centrifugal or Beet Sugar, in accordance with the terms of contract sale to you, dated ----- at ----- cents per pound.

----- pledge ----- to deliver sampling order to the last holder of this notice upon presentation of the same to -----; further pledge ----- to deliver on the ----- between the hours of ----- and ----- to the last acceptor of this notice, the negotiable warehouse receipt and withdrawal entry or entries

for the Sugar, against payment for the said Sugar, at the rate of ----- per pound; allowance, if any, to be made for excess or deficiency in the duty as established between the entry weight and polarization and the delivery weight and polarization.

Z, Y & Co.

CONDITIONS.

In consideration of one dollar paid to each of the acceptors, receipt of which is hereby acknowledged, it is agreed that the last acceptor hereof will, between the hours of ----- and ----- o'clock on the day preceding the -----, present the within notice to Z, Y & Co., and, on the following day, between the hours of ----- and ----- o'clock receive the negotiable warehouse receipt and duly executed withdrawal entry, or entries, and pay for the Sugar at the rate of ----- per lb., basis Cuba Centrifugal 96 degrees average polarization outturn, with additions or deductions for other grades, according to the rate of the New York Coffee and Sugar Exchange, Inc., existing on the afternoon of the day previous to the date of this notice. It is further agreed that each acceptor hereof shall continue his (or their) liability to each other for the fulfillment of the contract until this notice shall have been returned to Z, Y & Co., and a sampling order, specifying the sugar to be delivered, received by the last acceptor hereof from Z, Y & Co., and a negotiable warehouse receipt and withdrawal entry, or entries, shall have been de-

livered, at which time all responsibilities of intermediate parties shall cease.

Z, X & Co.

(Charter, etc., pages 118-119.)

It appears, therefore, that if a buyer has sold to another the same quantity that he had bought and for delivery in the same month, he may transfer his obligation to accept delivery to such purchaser provided he execute the notice within twenty minutes after receiving the same, and the differences between the contracts are settled in the manner provided for ring settlements; and the transfers of the notice may be continued until it probably will find lodgment with a member who can offset it against a sale to the party who is demanding the delivery.

In case a delivery is not made or accepted, notwithstanding notice has been duly given, then the question arises whether Rule 18 (Charter, p. 90) is applicable. This rule reads as follows:

In case of failure to deliver the coffee named in the contract when due, the basis of settlement of coffee due on such contract for default in delivery shall be one-quarter of one cent per pound on the entire contract above the net cash quotation for No. 7 Spot Coffee of the day of delivery, and in case of failure to receive the coffee named in the contract when due, if it shall prove to be the fault of the buyer, the basis of settlement of coffee to be received on such contract for default in receiving shall be one-quarter of one per cent per pound on the entire contract above the net cash quotation

for No. 7 Spot Coffee of the day following the day of delivery, provided, however, that no seller shall be entitled to receive penalty who has not given the stipulated notice of intention to deliver, and no buyer unless proper demand has been made by him before the expiration of the contract; provided also, that no defaulting party can claim settlement under this rule except upon evidence that the default was unintentional and not premeditated.

The price of Spot Coffee shall be fixed by the Spot Quotation Committee, on the actual value of No. 7 Spot Coffee, on said day of delivery, with the right to appeal by any party in interest to the Board of Managers, provided notice of appeal and \$25 be deposited with the Superintendent of the Exchange, within twenty-four hours after the Spot Quotation Committee shall have established the net cash price of No. 7, as prescribed in Section 33. Nothing, however, in this rule shall be construed to prevent a settlement by mutual consent.

RULE 18a. Settlement shall be made, if demanded, for any deficiency or excess from weights specified on the face of the contract where the variation is in excess of one per cent and not exceeding four per cent, except where such deficiency is caused by the allowance prescribed in Trade Rule 28, either at the net cash value of No. 7 Spot Coffee on the day of delivery, with one-fourth ($\frac{1}{4}$) of one per cent per pound penalty, or in case of a deficiency the deliverer may supply the quantity required and a supplementary Certificate

of Grade, to be a part of the original certificate and of the same expiration, to be issued for such additional coffee, provided also that no defaulting party can claim settlement under this rule except upon evidence that the default was unintentional and not premeditated.

The provisions of this rule are made applicable to sugar transactions by sugar trading rule No. 15 (Charter, etc., p. 120), which reads as follows:

The provisions of Trade Rule 18 shall apply to sugar transactions excepting that the basis of settlement on raw sugar shall be one-quarter of a cent per pound above the quotation for Spot Cuba Centrifugal 96 degrees average polarization outturn, as established daily by the Sugar Committee. On Refined Sugar the settlement shall be made on the Spot Quotation at Chicago as established daily by the Sugar Committee and shall be at the rate of $\frac{3}{8}$ of a cent per pound.

No seller shall be entitled to receive penalty who has not given the stipulated notice of intention to deliver, and no buyer unless proper demand has been made by him before the expiration of the contract; provided, however, that no defaulting party can claim settlement under this rule except upon evidence that the default was unintentional and not premeditated.

How easy it may be made to appear that the default was unintentional depends entirely upon the practice on the Exchange and the inclination of those selected to enforce the rule.

But should all these requirements fail to stop the delivery, then the following provisions, appearing in Rule 21 (Charter, etc., pp. 93, 94), which relate to the actual delivery, become applicable:

The party with whom the transferable notice has finally lodged shall show the same to the issuer thereof, on the day before the delivery and within the prescribed hours, retaining the transferable notice until the delivery is completed.

Should the certificate of grade be ready for representation, the issuer of the notice shall, on the day of delivery, present at the office of the party holding the transferable notice, between the hours of 12 m. and 2 p. m. (except when such business day shall be Saturday, in which case the hours shall be 10.30 a. m. and 11.30 a. m.) a bill, weigher's return, certificate of grade, and negotiable warehouse receipt duly endorsed, for each delivery of about 250 bags of coffee, whereupon the delivery and payment shall be simultaneously made.

Upon a redelivery of a negotiable warehouse receipt, it shall be at the option of the deliverer to deliver the receipt free and clear of all expense or to allow the monthly charge of the warehouse in which the merchandise is stored for each month that has expired since the date of the warehouse receipt, or since the date to which the storage has been paid and so stamped on warehouse receipts, and for fractional part of a month, one-half the monthly charge of such warehouse for the first fifteen

con
del
pro

days and the full monthly charge for sixteen days or over.

Should the certificate of grade not be ready for presentation the delivery shall take place as above and the receiver shall make payment of the bill presented retaining $\frac{1}{2}$ c. per pound on the net weights delivered until the grading certificate is furnished. Any deliverer of coffee who shall present a bill for more than a grade above that finally established shall be subject to a complaint under Sec. 46 of the By-Laws.

The estimated value of the coffee tendered in this manner must be stated upon the bill and the difference between this amount and that paid shall be, if demanded, deposited in a designated depository of the Exchange in the same manner as required in the deposit of margins, until the certificate of grade is furnished.

On such deposits the parties are entitled to interest at the rate allowed by the depository on the amount ascertained on final settlement to be due to each, but all such deposits are subject to Trade Rule 11 applying to variation margins.

And to make it certain that the real owner of the contract shall have no connection whatever with the delivery of the sugar, Rule 23 (Charter, etc., p. 96) provides:

Coffee delivered on contract shall be so delivered and received only by the brokers employed in such delivery or receipt. *No principal, either by himself or through any agent,*

shall be allowed to interfere in such delivery by word or deed, directly or indirectly; and in case of such interference the delivery or receipt of the coffee upon the contract in which such interference shall take place shall be at once stopped, and the principal so interfering shall pay to the other party a penalty of one-half of one cent per pound on all the coffee not delivered thereon at the time such interference took place.

Then, to penalize anyone who shall insist to the end on delivering or requiring a delivery of sugar, Sec. 104 of the rules provides (Charter, etc., p. 64):

Upon the delivery or receipt of coffee, or sugar, or when a contract is settled by a customer giving or receiving a transferable notice in fulfillment thereof, a brokerage, in addition to any commission that the purchase or sale of the coffee, or sugar, may be subject to, shall be paid.

For delivery or receipt of coffee or sugar such brokerage shall be not less than the corresponding commission prescribed in Section 103 for buying or selling.

When a transferable notice is given or received by a customer in fulfillment of a contract, the brokerage in that case shall be not less than one-half of the corresponding buying or selling commission prescribed in Section 103.

The commissions on sugar transactions appear in Sec. 103 (Charter, etc., pp. 62, 63), and are as follows:

RAW SUGAR (PER CONTRACT OF 50 TONS).

For members residing within the United States, Cuba, and Porto Rico:

Based upon a price—	Commission for buying or selling.	Floor brokerage for buying or selling.
Below 4 cents.....	\$6.25	\$1.50
4 cents up to 8.99 cents.....	7.50	1.75
10 cents up to 12.99 cents.....	8.75	1.85
13 cents up to 17.99 cents.....	10.00	2.00
18 cents and above.....	12.50	2.50

For nonmembers residing within the United States, Cuba, and Porto Rico double the above rates of commission shall be charged.

For members and nonmembers residing outside the United States, Cuba, and Porto Rico a commission of \$2.50 shall be charged in addition to the above rates.

REFINED SUGAR (PER CONTRACT OF 800 BAGS).

The minimum rate of commission for members residing within the United States, Cuba, and Porto Rico:

Based upon a price—	Commission for buying or selling	Floor brokerage for buying or selling.
Up to 9.99c.....	\$7.50	\$1.75
10c up to 12.99c.....	8.75	1.85
13c up to 17.99c.....	10.00	2.00
18c up.....	12.50	2.50

For nonmembers residing within the United States, Cuba, and Porto Rico double the above rates shall be charged.

For members and nonmembers residing outside the United States, Cuba, and Porto Rico a commission of \$2.50 shall be charged in addition to the above rates.

Whenever before thirty minutes after the close of the Exchange a member gives to another member for clearance purchases and sales of contracts corresponding in all respects except as to price, made during the day by himself or for his account when present on the floor of the Exchange, a charge for each contract shall be made equal to the corresponding floor brokerage rate for buying and selling, in addition to any floor brokerage incurred.

Members procuring business for other members may, by agreement, be entitled to one-half the commission rates for nonmembers prescribed in this section, less the corresponding brokerage charge, whether paid or not. But the division of nonmembers' rates of commission for procuring business, as prescribed in this section, must be based only on the scheduled rates prescribed therein, without regard to the additional charge imposed in said section.

The above-mentioned rates shall be, in each case, the minimum commission that may be charged by any member of the Exchange, and shall be absolutely net and free of all and any rebate and discount, in any way, shape, or manner; nor shall any bonus or pro rata percentage of commission be given or allowed to any clerk or individual, not a member of the Exchange, for business procured or sought

for any member of the Exchange; and any arrangement having in view, directly or indirectly, any rebate from the said rates shall be deemed an evasion and violation of this By-Law.

To prevent any interference by the courts at the instance of a member with the affairs of the Exchange, Section 84 of the By-Laws and Rules (Exchange, etc., p. 42) provides:

"Any member who shall himself, or whose partner or partners shall apply for an injunction or legal instrument restraining any officer or committee of the Exchange from performing his or its duties under the By-Laws and Rules shall, by that act, cease to be a member of the Exchange."

The total extra cost incident to a delivery of sugar on the Exchange will appear from quotations from a booklet recently issued by Lamborn & Company, who are brokers and members of the Exchange and the Clearing Association, Lamborn himself being a member of the board of directors of the Exchange. This booklet is entitled "Modern Methods of Marketing Cuban Raw Sugar"; and it describes in considerable detail the uses of the Exchange and operations thereon. *And it appears therefrom that the intention to make the Exchange only a rendezvous for speculators in sugar futures, and not a conduit through which sugar shall actually pass from the producer or manufacturer to their customers, is fully accomplished.*

In this booklet under the head "Should the Price of Near-by Futures be the Same as the Cost and Freight Price" (Booklet, pages 10 to 15), it is said:

It is expensive to deliver or receive sugars through the channels of the Exchange. The idea, therefore, is that the seller will buy back his Exchange contract and sell in the cost and freight market, and that the buyer will sell his Exchange contract and buy in the cost and freight market.

On the same subject it is again said:

Question. Does it cost more to deliver through the channels of the Exchange than to deliver in the ordinary way?

Answer. Yes.

Question. Why?

Answer. To be safe. Without going into details, the Exchange provides certain guarantees to effectually safeguard the delivery and receipt of sugar. It provides certain machinery of delivery which is somewhat cumbersome in order that it be safe. This is true of all commodity Exchanges.

Question. How much does it cost to deliver on the Exchange?

Answer. *At the present writing, it costs the seller a minimum price of about 11c. and a maximum price of about 16c. to place sugars in warehouse and deliver on the New York Exchange. It also costs buyers about 14 cents to accept delivery on the New York Exchange and redeliver to their own warehouses, or to refiners.*

Question. Is it possible to buy and sell futures on the Exchange without paying this extra expense?

Answer. Yes. Approximately 6,000,000 tons of sugar were traded in during 1922 on the New York Coffee and Sugar Exchange, but only 55,000 tons were actually delivered through the channels of the Exchange. Under the rules of the Exchange, the seller of futures may buy back his Exchange contract, thereby being in a position to sell his actual sugars in the open market. The buyer also may sell his futures contract and buy his actual sugar in the open market.

By so doing, they save the unnecessary expense of deliveries and receipts through Exchange channels. It is very simple. The two Exchange contracts cancel each other automatically through machinery provided by the Exchange.

Then, under the heading "How it Works—An Example," it is said:

Let us assume that the original Exchange transaction was made at \$5.00. Let us further assume that as the time for liquidation arrives the cost and freight market is still at \$5.00. If delivery is made on the Exchange, the seller must pay, let us say, 16c., so that he will net only \$4.84. The buyer if he accepts delivery must also pay 14c. for delivery charges, so that his cost would be \$5.14.

Normally, the seller would be glad to buy on the Exchange at \$5.00 and sell in the cost and freight market at this price, thereby saving the cost of making delivery. Normally, the buyer would be glad to sell at \$5.00 and buy in the cost and freight market at this price, thereby

saving cost of taking delivery. But it sometimes happens that it would be very embarrassing to the buyer to accept delivery. The seller is in a much better position to make delivery, and if he knows he has the advantage, which he sometimes does, he can sometimes buy back his contract at a lower price than the cost and freight price. Regardless of the fact that it costs the seller, say, 16c to make delivery, it costs the buyer 14c to accept delivery. If the seller gives notice of delivery, the buyer must sell within twenty minutes or accept delivery. If he accepts, it will cost him 14c. Any amount less than 14c below the cost and freight market (where he will buy if he sells futures) will be a saving. Possibly, the buyer might not wish to tie up money at that particular time and would let the seller have the contract at \$4.86, or the full 14c under the cost and freight market. A speculator might get panicky and accept even less. In the above case the seller would sell his actual sugar for \$5.00 to which would be added this 14c profit. The seller would have made 14c more than expected and the buyer 14c less. The reverse also may be true. The buyer might be in a better position to accept delivery than the seller was in to make delivery. The advantage would then be with the buyer. Regardless of the fact that it costs the buyer 14c to accept delivery, it costs the seller 16c to make delivery. If the buyer thinks the seller can not make delivery, due to delayed arrival of raws, or for any other reason, the buyer will not sell his

futures and buy cost and freight at par. The buyer will try to get a higher price for his futures than the cost and freight market. The seller might locate a lot of cost and freight raws that he could deliver, but this would cost 16c. Any amount less than 16c above the cost and freight market (where he would sell if he buys futures) would be a saving. The seller might not wish to buy a round amount of cost and freight sugars to deliver against a small amount of futures and, therefore, might pay \$5.16, or the full 16c premium over the cost and freight market. A speculative seller might get nervous and pay even more. (Booklet, pp. 12-15.)

Under the caption "Extremes Above or Below Cost and Freight Should Not Govern Your Futures Transactions" (Booklet, pp. 15-18), the author of this booklet further says:

We have shown that with the cost and freight market at \$5.00 futures might sell at or slightly lower than \$4.86 or as high as \$5.16—possibly a little higher. The price will always be a reflection of the composite views of the interested buyers and sellers. While the obvious would be for buyers and sellers to liquidate futures at the exact price of the cost and freight market, thereby giving advantage to neither buyer nor seller, this can not be made compulsory and still have a free market. Human nature will have its fling. The buyer will try to outrade the seller in making him think that he will accept de-

livery and the seller will try to outrade the buyer and try to make him think he will make delivery. Buyers and sellers in the Sugar Exchange market are no different from buyers and sellers the world over. The buyer is always trying to buy low and the seller to sell high. These are natural instincts. *They can not be stifled. The safety valve is that every time the seller makes the buyer take delivery or the buyer makes the seller make delivery, they are both penalized by the respective costs of making and taking delivery.*

No one delivers or receives on the Exchange because they want to pay these extra expenses. It is a question of delivering small quantities through the Exchange in order to try to outguess the other fellow. For example, say a seller has sold 5,000 tons on the Exchange. The month for delivery arrives. If he can not repurchase at about the cost and freight market, he may issue delivery notice for, say, 500 tons. He will risk spending 11c. to 16c. per 100 pounds extra on 500 tons to improve his chances of buying back the other 4,500 tons at or below the cost and freight market. It may work. On the other hand, if the buyer thinks he can outguess the seller, he will accept delivery of the 500 tons. The buyer will risk spending 14c. per 100 pounds extra on 500 tons, with the object of discouraging the seller and making him pay above the cost and freight market for the other 4,500 tons.

From the above it would seem conclusive that the extremes above and below the cost

and freight market should not govern your course of action.

It seems very certain that no such large volume as nearly 6,000,000 tons of sugar could have been traded in during 1922, if every time the seller sold at, say, \$5.00, and the buyer bought at, say, \$5.00, they figured that with the cost of making and taking delivery they were selling at \$4.84 and buying at \$5.14. If every Exchange sale was made on the premise by the seller that he would net 16c. less than the Exchange price, and on the premise by the buyer that it would cost him 14c. more than the Exchange price, there would be a difference of 30c. between the net to the buyer and the net to the seller at the same Exchange price. This difference, if figured by every seller and every buyer, would have seriously reduced the volume of business. That buyers and sellers have thought correctly in not figuring the full cost of making and taking delivery, is shown by the fact that *less than 1 per cent of the volume of trading resulted in deliveries through the Exchange channels.*

A person making a limited number of transactions might consider deducting from the selling price the cost of making delivery, or adding to his buying price the expense of taking delivery. The fewer the number of transactions, the safer this would make it. The more constantly the Exchange is used, the safer it would be to figure that while the cost and freight market will not always be the same as the *near-by* Exchange deliveries—

sometimes being a little higher and sometimes a little lower—on the average it will work out about the same as the Exchange market.

It is apparent, therefore, that the Exchange was intentionally so organized and controlled as to prohibit the making of deliveries pursuant to contracts made thereon; and that it was established solely for the purpose of trading or speculating in futures, with no expectation or intention that the contracts entered into on the Exchange should be consummated by a bona fide compliance with their terms.

III.

Relation between the prices of near-by futures on the Exchange and prices in the cost and freight market.

As there is no trading in spot sugar on the Exchange, the spot prices are controlled by the prices of the near-by futures.

That the Exchange prices govern or vitally affect the spot prices of sugar in the cost and freight market is really undisputed; but the court's attention is specially called to the following evidence upon the subject.

In an interview which Maj. L'Esperance, a special assistant to the Attorney General, had with Mr. Stroud, superintendent of the Exchange, Mr. Stroud said: "*The transactions on this Exchange every day fix the price of sugar for the entire world; the refiners do not make a move until this Exchange opens in the morning.*" (R. p. 169.)

Mr. Post, of the National Sugar Refining Company of New Jersey, states: "That the prices which said corporation [the National Sugar Refining Company] has been compelled to pay for raw sugar required in the conduct of its business are strongly influenced, and at times seemingly controlled, by the prices established as a result of transactions in 'futures' taking place from day to day on the floor of the New York Coffee and Sugar Exchange (Inc.); that the rapidly advancing price of raw sugar since February 1, 1923, has necessitated correspondingly rapid increases in the price of refined sugar." (R. p. 126.)

The same statement in effect is made by Mr. Babst, of the American Sugar Refining Company (R. p. 123); Mr. Jamison, of Arbuckle Brothers (R. p. 122); Mr. Lowry, of R. Atkins & Company (R. p. 125); and Mr. Smith, of the Federal Sugar Refining Company (R. p. 120).

Bearing upon this subject, in Lamborn & Company's booklet, it is said:

If this is done [the seller buy back his contract and sell in the cost and freight market] when the Exchange prices and the cost and freight prices are identical, then both buyer and seller of the original futures contracts have changed their futures contracts (on which there is the cost of making and taking delivery) to raw sugar cost and freight, at the total price of their original futures contracts.

Theoretically it should be possible to buy or sell futures for nearby delivery at approxi-

mately the same price that you would pay or obtain in the open market for the actual commodity. That is, if you had sold futures and when the delivery date approached if you wished to buy back the contract you had sold, you should be able to do this at about the price then ruling in the raw market cost and freight New York.

But this is where theory and fact part company. As you will see by the accompanying charts there is usually a slight difference between the cost and freight market and the nearby futures market, although the two markets keep returning to equality. There is no such thing as an average variation. The variation, however, is rarely more than slight. The variation would probably be even less if none but refiners and raw sugar producers used the Exchange, but speculators can not be kept out of the market. To be of value, it must be free. (Booklet, pp. 10, 11.)

And again:

Those who use the Exchange more or less constantly can, we believe, with considerable safety consider that the cost and freight market—sometimes being a little higher; sometimes a little lower—will on the average work out *about* the same as the Exchange market. To one making a very limited number of transactions it would probably be safest to allow a margin or difference between the Exchange price and the cost and freight market. The amount of this margin or difference might be determined by the cost of

making delivery on the Exchange if a seller, or accepting delivery if a buyer. (Booklet, p. 11.)

On pages 14 and 16 of the booklet are two charts which show the close relationship between the cost and freight market prices and the prices on the Exchange. In connection with a table showing spot prices of raw sugar on the several dates from February 1 to April 21, 1923, Mr. Diercks says:

I give below the *spot* prices in New York on each of said days, from which it will be seen that the price for spot sugar rose concurrently with the advances in futures and with the refiners' advances for refined sugar. No spot sugar is sold on the Exchange, *but the Exchange keeps a record of prices as determined each day by its Sugar Committee, for purposes of settlement in accordance with Sugar Trade Rule 50, hereinbefore set forth.* (R. 76.)

And a comparison of the tables (R. pp. 20, 76) does show, as said by Mr. Diercks, that spot prices and prices of futures fluctuated in the same way, though not always to the same extent. This table will be again referred to hereafter.

The foregoing evidence shows that the prices of sugar in the market both for immediate and future delivery are controlled entirely by the prices upon the Exchange, although there may be a slight difference between the spot price and the price of the nearest future.

IV.

Contracts on the Exchange.

1. Hedging Contracts.

The foregoing facts and deductions therefrom will be helpful in discussing intelligently the different classes of transactions upon the Exchange. Consideration will first be given to hedging contracts.

With reference to such contracts it is said in the answer:

That a large part of the total volume of trading in sugar for future delivery in the exchange room of said Exchange, as above described, consists of contracts made by producers of sugar, refiners, merchants, and other consumers, *who make such contracts entirely for the purpose of insuring themselves against price fluctuations, respecting sugar either owned, sold, or purchased by them, for the purpose of merchandising or shipping to consuming markets or refining, or using in manufactured products in which sugar is used, and that in most cases such contracts for future delivery are fulfilled by the making of counter contracts to offset the ones originally made; the actual sugar which such future contracts were based upon being sold or disposed of to refiners or others.* (R. pp. 40, 41.)

Mr. Diercks, president of the Exchange corporation, says:

Although it is impossible actually to state the proportion, since it is within no single man's knowledge or means of knowledge, I am

convinced that the greater part of the trading in sugar on the floor of the Exchange represents transactions legitimately made by producers, dealers, or consumers of sugar for the purpose of protecting themselves from fluctuations in value of the sugar which they own or have bought or intend to buy. The quantity of sugar dealt in on the Exchange necessarily is many times larger than the amount of sugar actually involved in commercial operations, for the reason that three or more owners or handlers of such sugar may seek the benefits of future trading to protect them in their legitimate business. (R. p. 68.)

Mr. Bennett, first vice president of the Bank of America, says:

We are always willing to loan to a greater extent against sugar purchased or owned by the borrower if any loss due to a decrease in the value of the sugar is protected by sales of "futures" on the Sugar Exchange, because such sales afford protection against possible loss arising from marked fluctuations in price. We, therefore, regard the opportunities which the Sugar Exchange gives for the making of future contracts as a valuable economic function and of great importance in connection with the normal trade in sugar. Such contracts for future delivery, in our opinion, have the effect of stabilizing the market, tending to prevent sudden fluctuations. (R. p. 89.)

Similar statements are made on behalf of defendants by Bernard D. Forster, vice president of the Bank of Manhattan Company (R. p. 89); Walter F.

Frew, president of the Corn Exchange Bank (R. p. 90); Joseph W. Harriman, president of the Harriman National Bank (R. p. 91); William N. Kingsley, vice president of the United States Trust Company (R. p. 91); H. J. Cook, vice president of the Equitable Trust Company (R. p. 92); F. J. Leary, vice president of the Central Union Trust Company (R. p. 115); and E. W. Stetson, vice president of the Guarantee Trust Company (R. p. 115). Defendants also introduced statements by Charles Godchaux, president of the Godchaux Sugars (Inc.) (R. pp. 93, 94), and Horatio B. Young, secretary of the W. J. McCahan Sugar Refining and Molasses Company (R. pp. 94, 95), to the effect that they sometimes purchase future requirements on the Exchange and frequently protect themselves by selling contracts for future delivery on the Exchange; and also introduced the statement of Charles C. Dupratt, of the American Beet Sugar Company (R. p. 93), to the effect that their concern had not yet protected itself against fluctuations in the price of sugar by selling contracts on the Exchange, but had been considering doing so; and that in his judgment the Exchange "fulfills a great economic function and facilitates the marketing of the sugar crop by keeping the producing and consuming public advised of the trend of world opinion with respect to prices." Mr. Strauss, chairman of the board of directors of the Cuba Cane Sugar Corporation, "one of the largest single producers of raw sugar in the island of Cuba," says "We find opportunities afforded by the New York

Coffee and Sugar Exchange for making contracts for the sale of futures advantageous and useful in our business by permitting us to limit our risks on the fluctuations of the market" (R. p. 116). Twenty-six members of the Exchange say that to their personal knowledge the greater part of the transactions on the Exchange in which they and their firms have participated "constituted hedges made by parties who were actually engaged in the producing, handling, or distribution of sugar for the protection of actual sugar transactions" (R. pp. 84, 85). Manifestly, therefore, defendants realize that the justification, if there be any, for the existence of the Sugar Exchange is in the fact that the Exchange affords to *bona fide* sellers or purchasers of sugar an opportunity to secure themselves against loss, which it is claimed is done by means of hedging contracts.

In the first place, defendants are undoubtedly mistaken as to the ratio between hedging contracts and those that are purely speculative. There is some permanency about a hedging contract. It is not canceled on the day it is made but is carried probably for two or more months. The table on page 23 of the record shows the number of contracts made during each month from November, 1922, to March, 1923, inclusive, and also the number carried over from each preceding month. There were generally about twice the number made as were carried over, and in February, 1923, there were about seven times, and in March about four times as many made as had been carried over. All this clearly shows that

purely speculative contracts are always in excess of those made for hedging purposes, and for the latter months mentioned they were greatly in excess.

But as so much stress is laid upon hedging contracts, let us study them carefully and ascertain their functions and effect.

In all illustrations it will be assumed that the cost and freight price and the Exchange price are the same, as is assumed in the examples given by Lam-born & Company, and also by Meinrath Brokerage Company, to which reference will be hereafter made.

The several classes of hedging contracts will be considered separately.

1st. Selling Sugar.

(a) *Selling futures on the Exchange in anticipation of actual sales to be made outside the Exchange.*

In such a transaction, of course, the seller never intends to make an actual delivery but to cancel the sale by a subsequent contract of purchase on the Exchange of a like quantity.

Suppose it is January, and a cane grower or grinder expects to have 100 tons of sugar for delivery in May; the price for May deliveries is \$5.00 per hundred pounds, and he is willing to accept that price for his anticipated production. He then sells upon the Exchange 100 tons at \$5.00 per hundred. This is called a short sale, because he does not then own the sugar. When May arrives suppose the price has declined to \$4.50 per hundred. He then buys

100 tons on the Exchange at \$4.50 and cancels his contract, receiving a margin of 50 cents per hundred profit, and he sells his real sugar outside the Exchange upon the cost and freight market at the prevailing market price of \$4.50 per hundred. This added to his margin of profit makes \$5.00 per hundred, or the price at which the future sale was made in January.

Again, suppose that the price has advanced to \$5.50; then the seller will buy on the Exchange 100 tons at \$5.50 to cancel his contract at \$5.00, and will lose 50 cents per hundred; but he will sell his real sugar on the cost and freight market at \$5.50, or 50 cents more than the price in January; and the 50-cent loss on the Exchange transaction is offset by the 50-cent advance in the market. *In both of these instances the seller receives exactly the price he would have received in January in a bona fide sale of sugar to be delivered in May, but has had to pay the commission on two transactions on the Exchange.*

The above illustration is in substance the same as those given in the booklet by Lamborn & Company. Let us examine those illustrations somewhat minutely. The first one illustrates hedging "to predetermine a colono's profit." (Booklet, pp. 23-25.) A colono is a cane grower in Cuba; and he may want to sell his anticipated crop for delivery at the time it will be converted into sugar. It is there assumed that the colono will have 500 tons of sugar, and that the March price on the Exchange is \$5.00, from which

is deducted 30 cents for the cost of placing the sugar in New York, leaving \$4.70, which is called the promedio price. The problem is thus solved for both a declining and an advancing market.

If promedio price declined to.....	\$3.70
You should pay in covering futures about.....	\$4.00
Price at which you sold futures.....	5.00
Add profit on Exchange hedge.....	1.00
Total price as predetermined.....	4.70

This is what you set out to effect, i. e., of having your profits based on a promedio price of \$4.70.

If the reverse situation exists and sugar has advanced let us say to \$6.00, you will take a loss of \$1.00 per 100 pounds in covering your futures sale, but the promedio price should also be \$1.00 higher, or \$5.70. This is the way to figure your receipts in this case.

If promedio price advanced to.....	\$5.70
You should pay in covering futures about.....	\$6.00
Price at which you sold futures.....	5.00
Deduct loss on Exchange hedge.....	1.00
Total price as predetermined.....	4.70

In one case the market declined after your hedge and in the other case it advanced, but in both instances you obtained the price you figured on when you hedged.

If at the time your cane was being delivered to the Central, there had been no particular change in the price of futures, you should make no profit or loss on your Exchange transaction. But you would have had the assurance that had the market declined you would still have received a satisfactory figure for your cane (Booklet, p. 25).

It is thus made to appear that the colono is enabled by these transactions on the Exchange to secure in March the price which sugar for March delivery is bringing at the time he desires to make the sale. *But what would the figures be should the colono then sell his ACTUAL sugar at the prevailing price for delivery when the sugar shall be produced in March? By such a contract every item in both calculations would be eliminated except the result, to wit, "total price as predetermined, \$4.70."*

There is then illustrated with figures a little more complicated "Hedging to determine a central's profit when grinding colono cane." (Booklet, pp. 26-28.) A central is one who grinds the grower's cane. He contracts to give to the grower sugar to the amount of a certain per cent, say from 5 to 7 per cent, of the weight of the cane, or to pay him the promedio price for that quantity of sugar. The rendement is the per cent of the cane that is converted into sugar. In this problem it is supposed that the colono has brought the central 10,000 tons of cane; that the rendement is 10 per cent, of which the colono is to receive 5 per cent, or one-half, and that therefore the central will have 500 tons against which to hedge by selling March futures at \$5.00 per hundred pounds. It is also assumed that it will cost the central \$2.00 per ton, or \$20,000, to grind the cane and 50 cents per hundred pounds, or \$5,600, to place the sugar in New York—not in an exchange warehouse, however, because it is not intended that the sugar shall ever be

delivered through the Exchange. The problem is then solved as follows:

Hedges by selling futures at.....	\$5.00
If the Exchange market declines to.....	4.00
Price of sugar C. & F. N. Y. should decline to about.....	4.00
Profit on hedge \$1.00 per 100 lbs. or total of.....	\$11,200
Price central would receive for 500 tons of actual sugar at \$4.00 C. & F.....	44,800
Gross receipts.....	56,000
Cost of manufacture.....	20,000
Cost of placing C. & F.....	5,600
	<u>25,600</u>
Total profit on all transactions.....	30,400

Though the market declined as anticipated, the central secured the total profit of \$30,400, because of their hedge at \$5.00.

Suppose the market advanced, instead of declining, let us say to \$6.00. The price of actual sugar C. & F. N. Y. should be about \$6.00.

Price central would receive for 500 tons of actual sugar at \$6.00 C. & F.....	\$67,200
Cost of manufacture and placing C. & F.....	\$25,600
Loss on hedge.....	11,200
	<u>36,800</u>
Total profit on all transactions.....	30,400

And then it is gravely said:

It will again be noted that the central secured the total profit of \$30,400, which they had previously determined was a satisfactory one when they hedged at \$5.00.

In each case the result is the same. The central by hedging predetermined the amount of their profit. * * * Whether the market declines, advances, or stays the same, the central by hedging is able to predetermine the approximate amount of their profit.

But why is this done *by hedging*? He could have determined it just as certainly, and without the expense of the Exchange transactions, by making a *bona fide* sale of his sugar for delivery in March. In case he had made such a contract the solution of the problem would be as follows:

500 (long) tons of sugar, at \$5.00 per 100 lbs.....	\$50,000
Cost of manufacture.....	\$20,000
Cost of placing C. & F.....	5,000
	<hr/> 25,000
Total profit on all transactions.....	30,400

Another problem of precisely the same character is stated and solved to illustrate "Hedging to determine a central's profit from administration cane." (Booklet, pp. 29, 30.) And by the same simple process it can be shown that hedging contracts on the Exchange for the purpose suggested are absolutely useless.

Many a colono and central has doubtless been made to believe that these two transactions on the Exchange, one the purchasing of futures and the other buying them back at the time specified in the contracts for delivery, which require the payment of commissions to his broker, were absolutely necessary for him to secure with certainty the price sugar was then bringing for delivery at the time specified in the Exchange contract of sale.

Let us again suppose that one who sells his May futures at \$5.00, instead of waiting until May to buy back his contract, concludes that he will buy in March when the price has dropped to \$4.75. If

it continues to drop until it reaches \$4.50 in May, when he is ready to deliver his sugar, he pays on the Exchange 25 cents less than the price at which he sold, and therefore clears a margin of 25 cents; but he loses 50 cents in May on his actual sale of sugar in the cost and freight market, and his net loss therefore is 25 cents.

If, however, when he buys in March the price has increased to \$5.25 and it continues to rise until it reaches \$5.50 in May, in buying back and canceling his contract on the Exchange he pays 25 cents more than the price at which he sold and loses on the Exchange 25 cents, but he makes 50 cents on his sale of actual sugar in the cost and freight market, and his net gain, therefore, is 25 cents. *But the transaction possesses all the elements of chance incident to a sale or purchase upon the Exchange for the sole purpose of speculation.*

In fact, in hedging it is not the Exchange transaction that stabilizes the deal in actual sugar, but it is the ownership and sale of the sugar that makes certain the result of the Exchange transaction.

(b) *Selling sugar in the cost and freight market and buying futures on the Exchange.*

This is merely suggested in Lamborn & Company's booklet (Booklet, p. 20), and no problem is worked out to illustrate such a transaction. It is there said:

When futures are selling at a discount you are also presented with an opportunity. Under these circumstances, when the discount

has become sufficiently attractive, your chance for profit lies in selling your sugar and replacing by buying futures. By doing this you secure cash for your sugar; and if the market rises as anticipated, you approximate the same result as though you had held your sugar.

If such a transaction is called a hedge it is nevertheless nothing other than a straight speculation in futures. If the price goes up the transaction *on the Exchange* will be profitable, because the owner of the sugar buys futures at a lower price than he will pay; but if he should misjudge the market, and it should continue to decline, he would lose, because he pays a greater price than he will receive when he sells; and in either case "*you approximate the same result as though you had held your sugar,*" though the writer is careful to make such suggestion only in connection with a rise in prices.

Of course, if the market should continue on a decline he could sell and avoid further loss, just as is done in connection with any other speculative transaction on the Exchange.

2nd. Buying Sugar.

The Meinrath Brokerage Company manifestly has a large clientage, and is seeking a larger one, of buyers of refined sugar; and they have issued a pamphlet entitled "An outline of the opportunities, advantages, and manner of operating in refined sugar futures on the New York Coffee and Sugar Exchange," a copy of which is filed by defendants with the affidavit of Mr. Charles D. Budd, jr., a

member of the firm. This pamphlet, like that issued by Lamborn & Co., is not printed in but constitutes a part of the record; and a copy is furnished each member of the court. Hedging contracts from the standpoint of the buyers of sugar are described in this pamphlet under the following headings: "Hedging to determine a loss," "Hedging to determine a profit," "Hedging to eliminate a purely speculative profit or loss," and "Hedging to protect against future sales of manufactured products," there being two examples under the last heading, one of a buyer and the other of a seller.

As the first two illustrations deserve the more careful attention, consideration will first be given to the third, fourth, and fifth examples.

(1) The third (Hedging to eliminate a purely speculative profit) is the seller's hedging contract, to insure that he will get the prevailing future price for his sugar, reversed. Green & Co. on May 1 buy in the cost and freight market 2,400 bags of granulated sugar at \$8.00 per hundred pounds, to be delivered in July. At the same time they sell on the *Exchange* the same quantity at the same price. If the price advances \$1.00 by July they will lose a dollar per hundred on the *Exchange* contract, because it will cost them that much more to buy their contract back than the price at which they sold, but they can realize on the sugar actually bought \$1.00 per hundred profit, which will cancel the loss.

But here it is apparent that if Green & Company are manufacturers of candy or preserves or canned

goods, and want to use their sugar and not sell it, they will lose just a dollar a hundred in the gamble on the Exchange. So if they are wholesale grocers they will doubtless sell their sugar in the trade at a price based on the price which they had contracted to pay, and will suffer the same loss.

Suppose, however, the price declines \$1.00; then G. & Co. will make \$1.00 per hundred on their exchange contract, because they will buy their contract at \$7, but their actual sugar will be worth \$1.00 less than they paid for it. If they have sold their sugar in the trade, or the goods, into the manufacture of which the sugar has entered, on the basis of \$8.00 per hundred pounds for sugar they will clear \$1.00 per hundred; but this profit is derived from the purely speculative contract on the Exchange, just as is the loss if the price advances.

(2) In the fourth example G. & Co. are assumed to be canners of peas, and they want to sell in January and February for future delivery peas in the canning of which sugar will be used that is bought for delivery in May. It is based on the assumption that there is no market outside the Exchange in which sugar can be bought for delivery in May, which is assumed not to be the fact in the other examples given. Anyway, it is not strictly a hedging contract, because G. & Co. are *compelled* to make it, as it is supposed that it is the only way they can purchase sugar. They buy on the Exchange the May futures at \$8.00. If the market advances to \$9.00 they sell their contract at that price, making \$1.00 per hundred pounds, and take

the \$9.00 and buy sugar in the cost and freight market at that price, thus obtaining the same quantity of sugar their Exchange contract called for at \$8.00.

If the market recedes \$1.00 they lose that much in the Exchange transaction, because to cancel their contract they sell at \$1.00 less than they paid; but they buy the sugar in the cost and freight market at \$7.00, and therefore get the same quantity as that called for in their contract on the Exchange. But the same result would follow if they made a *bona fide* contract for the sugar to be delivered in May; and they would not have to pay a commission on two transactions.

(3) The fifth example is one of pure speculation. There G. & Co. are candy manufacturers; and after they have made a quantity of candy they fear that the price of sugar will decline; and they therefore sell on the Exchange an amount of sugar equivalent to that used in making the candy, for delivery on a near-by future date, at, say, \$7.90. If contrary to expectation the market advances G. & Co. must run to cover by buying immediately the same quantity they have sold, suffering, of course, some loss. But if their judgment is correct and the market declines, say, to \$7.00, then G. & Co. can buy at that price and cancel their contract at a profit of 90 cents. And it is said: "There would unquestionably have been some declines in the candy market, but Green Bros. would have protected themselves against these declines, at least to the extent they had hedged on the Exchange. Of course, they were not obliged to cover by buying

in at seven dollars, but could have held off longer in anticipation of further decline." And so could any other speculator upon the Exchange.

So a manufacturer of shoes or saddles could "protect" himself on the Sugar Exchange in the same way, and to the same extent, if he expected the price of leather to decline. And whether he would lose or make would depend upon whether the price of sugar would advance or decline.

(4) The first example is "Hedging to determine a loss." There G. & Co. on May 1 purchase from a refiner a quantity of granulated sugar for July delivery at \$8.00. Later in the month the market declines to \$7.50. They fear it will decline further, and hedge by selling the quantity they contracted for at \$7.45 on the Exchange for delivery in August. If they are mistaken and the market advances *they must cover at once* by buying the same quantity, or lose to the extent of the advance. If the market declines to, say, \$6.50 for July delivery and they can succeed in buying at \$6.42 for August delivery, they will make on the Exchange transaction \$7.45 minus \$6.42, or \$1.03; but they will sell their real sugar at a loss of \$8.00 minus \$6.50, or \$1.50. Their net loss, therefore, will be \$1.50 minus \$1.03, or 47 cents per hundred. Here is again the assumption that G. & Co. do not want to use the sugar, or have not already sold it, if jobbers, which assumption is generally not true unless they are purely speculators; and if they are speculators they don't want the sugar at all.

(5) The second example is "Hedging to determine a profit." G. & Co. buy from a refiner on May 1 for July delivery at \$8.00. The market soon advances to \$9.00; and G. & Co. want to make sure that they will realize the dollar profit. They can then make the \$1.00 per hundred pounds by selling the sugar actually bought, but they must have it in their business in July. They therefore sell the same quantity on the Exchange at \$9.00. The result, whether the market continues to advance or recedes, is thus stated:

In case of further advances, Green & Co. will buy in on the Exchange, with neither profit nor loss, or perhaps a slight loss. They will take the full benefit of the advance in selling the 2,400 bags which are delivered to them by the refiner at \$8.00.

If the market recedes from \$9.00, returning to \$8.00, Green & Co. will cover by buying three lots (800 bags each) realizing a profit of 100 points or \$1.00 per bag. They will still have the 2,400 bags to be delivered by the refiner, which cost \$8.00 and are salable on a market of \$8.00. It is quite apparent that the profit of 100 points which was determined by the Exchange hedge has actually been established and realized.

This illustration applies only to jobbers, because it is said, "They could, of course, resell the 2,400 bags, but bear in mind that this firm *must have that quantity of sugar for actual distribution to their trade in the month of July.*" If they have sold the sugar in the trade on the basis of \$8.00 and the price con-

tinues to advance, they lose on the Exchange transaction, and realize no profit from the advance in the cost and freight market. If the price declines they make a profit on the Exchange transaction, just as any other speculator does. *In fact this is not a hedging transaction for so-called protection, but purely a speculative transaction to realize a profit. And as with every other speculative or gambling contract on the Exchange, G. & Co. make a profit if the price of sugar goes the right way and lose if it goes the wrong way.*

Professor Seligman in his "Principles of Economics," which is quoted from by Mr. Gilmour, witness for defendants (R. p. 109), gives another form of hedging. There an English miller is supposed to purchase in February wheat at Chicago which can not be delivered to him in England until September. The price is then 90 cents per bushel, and fearing that it may decline before delivery he sells on the Exchange the same quantity he has bought. When the wheat arrives in September the price has declined to 75 cents, and by buying the same amount on the Exchange to cancel his contract he makes 15 cents per bushel, which offsets his loss on the wheat actually purchased. Of course if in the meantime the price had advanced he would have lost in the transaction on the Exchange, which would have been offset by the gain in the price of the wheat actually bought. In other words, such a form of hedging insures that the purchaser will get the wheat at the market price at the time of its delivery plus the

broker's commission on the two transactions; and the same result could have been accomplished without paying the commission by stipulating in the contract that the purchaser would pay the market price prevailing when delivery is made.

Considering all the examples given by Lamborn & Company and Meinrath Brokerage Company and Professor Seligman, the obvious thing is that the hedger has made, or contemplates making, the *bona fide* contract in the *real sugar market*, where *sugar* is *actually* bought and sold. He doesn't have if a seller, and doesn't want if a buyer, the sugar at the present time; but will have it or will want it at a future date. He claims he is not a sugar speculator, but wants "protection." And from these examples it appears there are a diversity of desires upon the part of these sellers and purchasers. One buyer wants it to be made certain that he will get the sugar at the then prevailing price for a specified future delivery; another wants a guarantee that he will get it at the market price prevailing at the time of delivery; another wants, if the price starts downward, to be guaranteed that he will not suffer any further loss; and another wants, if the price has gone up, to be guaranteed that he will not lose the then speculative profit by a decline before the date of delivery; and still another, whose sugar has been converted into candy, wants to make in a transaction on the Exchange enough to offset any depreciation in the value of his candy, should the price of sugar decline. The wants of the sellers are about the same,

but are figured out in the reverse way. Those who want it made certain at what price they will sell or purchase sugar on the delivery date can easily obtain what they desire without any use of the Exchange. The one can make a simple contract to take and the other to accept so much sugar at a certain time at the stipulated price. The others who want "protection" are purely speculators. They have in their business the same risks as many other business men, who produce the raw material, or who as manufacturers or jobbers buy supplies needed in the future. The manufacturer of furniture must buy his supply of lumber in advance and sell his goods for future delivery. The manufacturer of shoes must do the same with reference to the leather he needs and the shoes he makes. And the foundryman has to buy his pig iron months in advance, and contract for the future delivery of his product. The furniture maker, the shoe manufacturer, and the foundryman had as well go upon the Sugar Exchange and speculate to save himself against a probable loss, or assure a profit, as the manufacturer of candy or the jobber of sugar. The only difference is that the article dealt in is not in the line of the furniture or shoe manufacturer or foundryman; but the hedging contract of the candy maker is just as distinct from the real contract for sugar as the foundryman's contract on the Exchange would be from his real contract for pig iron.

But the protection is more imaginary than real. As above demonstrated, if the buyer has purchased

sugar for future delivery and the price has declined and he wants to protect himself against further loss by selling, or if he has bought and the price advances and he wants to be sure to realize the profit arising from the advance by then selling, he has to put himself absolutely in the hands of his broker. If when he sells the price starts or continues upward he must buy immediately and sell again when it starts downward. Absolute protection would require a transaction every time the price fluctuated on the Exchange, which, as will be hereafter shown, is practically every day. So at the end of the game the broker's commission would probably about equal the value of the sugar.

Moreover, during periods of excitement on the Exchange it is exceedingly unsafe for a producer of sugar to anticipate its future sale by selling futures on the Exchange. For illustration, take the period from February 1 to February 14 last; and suppose that a colono on February 1 expected to have 500 tons of sugar in September, and sold on the Exchange 500 tons for September delivery to secure the prevailing price of September futures. When the sale was made on February 1, the colono was required to put up a margin of \$2,500. Because of the increases in price (see Table R. p. 18) the amounts of margin the colono was compelled to have on deposit from day to day during that period were as follows:

February 2.....	\$3, 844
February 3.....	3, 508
February 5.....	3, 000

February 6	\$4,976
February 7	5,524
February 8	6,868
February 9	9,444
February 10	14,484
February 13	25,684
February 14	22,592

The value of the 500 tons of sugar on February 1, 1923, was \$43,008, and on February 13, \$66,192, which was an advance of \$23,184. Therefore, if the additional margin of \$11,200 had not been put up when called on the 13th his sale would have been canceled, his deposit of \$14,484 appropriated, and he would have been charged with an additional sum of \$8,700.

Under such conditions instead of endeavoring to relax the strain upon the *bona fide* traders who have entrusted their interests to the members of the Exchange, every step taken is designed for their own protection regardless of how greatly it may increase the burden upon those whom they represent. Thus while the required margin on February 1 was on the basis of \$250 per lot, because of the advance the basis was increased to \$400 on February 14, to \$500 on February 16, and to \$750 on April 20.

2. Contracts Admitted to be Purely Speculative.

With reference to such contracts it is said in the answer:

That another large part of said future trading in said exchange room consists of contracts made by or for so-called speculators, persons who have capital and make a study of trade conditions affecting prices, and endeavor to

forecast the future prices of sugar and profit thereby, through the making of such contracts for future delivery. (R. p. 41.)

Mr. Diercks also says:

In addition to these actual business transactions in connection with the movement and distribution of the crop, which I believe that even the Government representative will concede to be strictly legitimate and proper, there are transactions in futures on the floor of the Exchange by persons of large capital who study the sources of information with regard to consumption and production and forecast the probable course of prices of the commodity. Such persons make contracts for future delivery on the Exchange with the purpose and intention of taking advantage of the change in price in the event that their forecast of conditions is correct, running the risk of grave loss in the event that their forecast is incorrect. Speculation of this sort is of a most useful character. (R. p. 69.)

And again:

It is true that in addition to these men of capital and intelligence who thus speculate in futures there is some trading in futures by persons without the same degree of capital or intelligence who make future sales or purchases for the excitement and gamble, and that this class of speculation is undesirable and harmful to those who indulge in it, and usually results in a loss to the person so trading, but this class of transactions is in my opinion from my knowledge of transactions

on the Exchange relatively immaterial in volume. (R. p. 70.)

It is not pretended that any member of either of these classes, when he makes a contract of sale or purchase, has any intention to deliver or receive actual sugar. The former trade with the "intention of taking advantage of the change in price" and the latter trade and purchase "for the excitement and gamble." Both classes are concerned only about the margin of profit or loss.

According to the allegations of the answer and the sworn statement of Mr. Diercks, the president of the the Exchange, all transactions on the Exchange belong to the foregoing classes.

It therefore is subject to absolute demonstration that practically all of the contracts, if not every contract, on the Exchange is unlawful and unenforceable under the rules of law laid down by this court, and recognized by all courts as the law governing such transactions.

As heretofore said, defendants justify the existence of the Exchange and Clearing Association because of the opportunity it gives for hedging, or "protection," as they call it. They concede that the other classes of contracts described in their answer, and in the statement of the president, *are made for speculation*. Then let it be supposed that every contract made on the Exchange during a day's session are made for hedging by those who intend to cancel them by subsequent contracts on the Exchange, and who have made, or intend to make, collateral *bona fide* contracts outside the Exchange.

In *Irwin v. Williar*, 110 U. S. 499, 508, this court said:

The generally accepted doctrine in this country is, as stated by Mr. Benjamin, that a contract for the sale of goods to be delivered at a future day is valid, even though the seller has not the goods nor any other means of getting them than to go into the market and buy them; *but such a contract is only valid when the parties really intend and agree that the goods are to be delivered by the seller and the price to be paid by the buyer; and, if under guise of such a contract, the real intent be merely to speculate in the rise or fall of prices, and the goods are not to be delivered, but one party is to pay to the other the difference between the contract price and the market price of the goods at the date fixed for executing the contract, then the whole transaction constitutes nothing more than a wager, and is null and void.*

And in the syllabus the principle decided is thus stated:

If under guise of a contract to deliver goods at a future day the real intent be to speculate in the rise or fall of prices, and the goods are not to be delivered, but one party is to pay to the other the difference between the contract price and the market price of the goods at the date fixed for executing the contract, the whole transaction is nothing more than a wager, and is null and void.

When a broker is privy to such a wagering contract, and brings the parties together for the very purpose of entering into the illegal

agreement, he is *particeps criminis*, and can not recover for services rendered or losses incurred by himself in forwarding the transaction.

This expression of the court was quoted with approval in *Clews v. Jamieson*, 182 U. S. 461, 489-490, and the court there further said:

As a sale for future delivery is not on its face void, but is a perfectly legal and valid contract, it must be shown by him who attacks it that it was not intended to deliver the article sold, and that nothing but the difference between the contract and the market price was to be paid by the parties to the contract. And the fact that at the time of making a contract for future delivery the party binding himself to sell has not the goods in his possession and has no means of obtaining them for delivery, otherwise than by purchasing them after the contract is made, does not invalidate the contract. *Hibblewhite v. McMorine*, 5 M. & W. 462. Parke, Alderson and Maule, barons, before whom the case was heard, were unanimously of this opinion.

In order to invalidate a contract as a wagering one, both parties must intend that instead of the delivery of the article there shall be a mere payment of the difference between the contract and the market price. *Pearce v. Rice*, 142 U. S. 28; *Pickering v. Cease*, 79 Illinois, 328. In the latter case it was stated:

"Agreements for the future delivery of grain or any other commodity are not pro-

hibited by the common law, nor by any statute of the State, nor by any policy adopted for the protection of the public. What the law does prohibit, and what is deemed detrimental to the general welfare, is speculating in differences in market values. The alleged contracts for August and September come within this definition. No grain was ever bought and paid for, nor do we think it was ever expected any would be called for, nor that any would have been delivered had demand been made. What were these but 'optional contracts' in the most objectionable sense; that is, the seller had the privilege of delivering or not delivering, and the buyer the privilege of calling or not calling for the grain, just as they chose. On the maturity of the contracts they were to be filled by adjusting the differences in the market values. Being in the nature of gambling transactions, the law will tolerate no such contracts."

And in *Pearce v. Rice*, 142 U. S. 28, 40, it was remarked:

"But the evidence before us is overwhelming to the effect that the real object of the arrangement between Hooker & Company and Foote was, not to contract for the actual delivery, in the future, of grain or other commodities—which contracts would not have been illegal (*Pickering v. Cease*, 79 Illinois, 328, 330)—but merely to speculate upon the rise and fall in prices, with an explicit understanding from the outset that the property apparently contracted for was not to be delivered, and that the trans-

actions were to be closed only by the payment of the differences between the contract price and the market price at the time fixed for the execution of the contract."

A contract which is on its face one of sale, with a provision for future delivery, being valid, the burden of proving that it is invalid, as being a mere cover for the settlement of "differences," rests with the party making the assertion.

As shown by all the illustrations heretofore given, in no hedging contract upon the Exchange is an actual delivery of the sugar contemplated, but it is intended that the contract shall be canceled by a corresponding sale or purchase, and that there will be paid or received the margin between the sale and purchase prices. Therefore, during the entire day upon the Exchange everyone who makes a hedging contract to protect a sale, or contemplated sale, and everyone who, on the other hand, makes a contract to protect a purchase, or contemplated purchase, intends precisely the same thing; that is, each one intends to cancel his sale or purchase by a subsequent purchase or sale of the same amount of sugar and the payment of the advance or decline in price. There is absolute agreement upon that subject in the minds of everyone operating on the Exchange.

In a case which involves a transaction or even a series of transactions between certain brokers on the Exchange, as were the facts in *Clews v. Jamieson*, it may be difficult to prove that an actual delivery was not contemplated when such transaction or trans-

actions were had, and the presumption that a delivery was actually intended may not be overcome; but such presumption is absolutely destroyed when it is conceded that every contract during the day on the Exchange is of such character that no delivery could have been contemplated by either party in the making of any of them.

Now, if such is the law relating to contracts upon the Exchange when all of them are hedging transactions, a fortiori must the same rule apply when some of the contracts for the day are made by pure speculators, as described in the answer and Mr. Dierck's statement, and all the others are hedging contracts.

The fact that an exceedingly small proportion, considerably less than 1 per cent, of the contracts are consummated by actual deliveries can not prevent the application of the principles of law above stated, because, as explained by Lamborn & Company, they are caused by one speculator driving an opponent into a corner to obtain an advantage over him, when neither of them in fact contemplated making or accepting an actual delivery when the transaction was had.

However, this case does not turn upon the question whether any class of the contracts made upon the Exchange are technically legal, but whether the course of operations upon the Exchange restrains interstate commerce, which will be fully considered hereafter.

The advances in prices of spot and raw sugar from February 1st to the date of the filing of the petition were very largely, if not entirely, the result of speculative operations on the Exchange; and were not justified, or caused by the existing or prospective supply of, or demand for, sugar.

The immediate cause of the filing of the petition on April 9, 1923 was the general and rapid advance in the prices of spot sugar and sugar futures, beginning early in February and becoming particularly marked about February 13th. May futures advanced on the Exchange from \$3.65 on February 1st to \$5.97 on April 16th, or a total advance within sixty trading days of \$2.32 (Pet. R. p. 20); while spot sugar advanced from \$3.52 on February 1 to \$5.89 on April 16, a total advance of \$2.37 (Diercks, R. p. 76). The theory of the petition is that those advances, and the corresponding advances of futures for other months, were not justified by the actual conditions existing in the sugar market, but were at least very substantially the result of pure speculation on the Exchange.

However, the bearing that this increase in the price of sugar and the evidence relating thereto have upon the real question at issue should be kept in mind. Though it were found that a shortage in sugar did exist, which justified an increase in prices, such fact would not be determinative of the case. The question is, Does the Exchange as organized and operated unduly enhance or reduce the price of sugar? Do

manipulations and speculations on the Exchange at times substantially retard the effects of natural economic laws, and at other times unduly stimulate and enhance them? In other words, are prices substantially affected by speculations on the Exchange, (1) by increasing or diminishing the results that would naturally flow from actual market conditions, or (2) by the creation in the minds of speculators imaginary conditions which excite them to greater activity, or (3) by the stimulation of trading from causes which have no relation to the supply of and demand for sugar? It is apparent, therefore, that the causes of the fluctuations in the prices of sugar immediately preceding the filing of the petition are not themselves the issue; but the evidence relating thereto has a very material bearing upon the real issue, and as such should be carefully studied.

On February 8 spot sugar was \$4.01 and March futures were \$4.07; May, \$4.07; July, \$4.17; and September, \$4.23. On the 9th the prices increased as follows: Spot, 20c; March futures, 21c.; May, 25c.; July, 25c.; and September, 23c. On the 10th prices increased, spot, 6c.; March futures, 15c.; May, 29c.; July, 40c.; and September, 45c. The 11th was Sunday, and the 12th was a holiday; and on the 13th the increases over Saturday's prices were, spot, \$0.99; March futures, \$1.00; May, \$1.00; July, \$1.00, and September, \$1.00; which brought the prices to, spot, \$5.26; March futures, \$5.43; May, \$5.61; July, \$5.82; and September, \$5.91. (Pet. R. p. 20; Statement of

Diercks, R. p. 76.) The advance in futures on the 13th no doubt would have been greater had there not existed the rule which prohibited a greater increase on the Exchange in one day than 1 cent per pound.

From February 8 to 15 the prices of refined sugar charged by four of the refineries in New York advanced \$1.00 by one, \$1.25 by two, and \$1.30 by one. (Pet. R. p. 21.)

One contention in the answer is that the leap of \$1.00 per hundred pounds in the price of all futures, and of 99c. per hundred on spot sugar on the 13th was due to the publication on February 12 of an estimate of the sugar crops made by the Department of Commerce. (R. pp. 54, 55.)

But this contention is not consistent with the claim subsequently made in the answer, "that the recent advance in the prices of sugar is wholly due to the judgment and opinion of those who deal in said commodity and make a study of the conditions surrounding its production and consumption." (R. p. 61.)

According to the rules in the charter one object of the Exchange corporation is "to acquire, preserve, and disseminate useful and valuable business information" in regard to the sugar trade.

Mr. Gilmour, a witness for defendants, in speaking of how prices are reached upon the Exchange, says: "The supply and prospective demand, weather conditions, crops, economic conditions, etc., are all studied and considered, and it is the majority

opinion which prevails, whether rightly or wrongly, which makes the price, frequently far in advance of the events which had been anticipated and discounted." (R. p. 104.) And it is claimed, not only by those giving testimony in this case, but by economists who attempt to justify the existence of exchanges, that those who operate thereon carefully investigate the conditions of both production and consumption, and that the prices reflect a composite judgment reached by them based upon such original investigations.

Every operator on the Exchange had had access to every source of information that was open to the Department of Commerce; and nothing appeared in its report with which the members of the Exchange were not familiar. *Then, if the Exchange performs such a useful function in forecasting the future and fixing prices for future delivery, why should the statement issued by the Department of Commerce have produced such agitation in trading on the Exchange?*

But what was the information contained in this estimate of the Department of Commerce, which the answer alleges was "an adequate cause for the abrupt and sudden rise in prices on February 13, 1923"? Those parts of that estimate which are quoted in the answer as constituting the adequate cause are as follows:

In 1921-1922 the world's sugar consumption was 500,000 tons greater than production, and the prospects are that it will be 700,000 tons greater in 1922-1923. If these prospects

materialize, the heavy accumulated stocks of the end of the 1921-1922 season will have given way by the end of 1922-1923 to a carry over below the pre-war normal figure.

* * * * *

This year starts with another 4,000,000-ton Cuban crop in sight, a big crop in Java, and a greatly increased production in Europe. But various decreases elsewhere, notably in the United States, have brought the world production only 125,000 tons higher than it was last year, to supply consumption needs estimated at 350,000 tons more than in 1922, and 725,000 tons larger than production.

* * * * *

That the estimated production for 1922-1923 was 18,308,000 tons, and the estimated consumption 19,035,000 tons. (R. pp. 54, 55.)

To an intelligent reader who knows something about sugar—the very subject with which every operator on the Exchange is specially familiar—the facts stated meant that the Department of Commerce estimated that there would be 125,000 more tons of sugar produced this year than there were last year, but that there would be 350,000 tons more consumed; that the consumption would exceed the production by 725,000 tons; and that therefore the carry-over would be less than it usually was during the pre-war period. And a glance at the report would have shown that the estimated carry-over was 476,000 tons.

The same information was contained in the headlines and comment of the Journal of Commerce, in its issue of February 10, from which the following is quoted in the statement of Mr. Diercks:

WORLD SHORTAGE OF SUGAR IS FORECAST—DEFICIENCY FOR 1923 PLACED AT 250,000 TONS—DEPARTMENT OF COMMERCE SAYS CONSUMPTION NEEDS ARE 725,000 TONS ABOVE PRODUCTION, WITH 476,000 TONS CARRY-OVER.

The newspaper article opened with this sentence:

Washington, Feb. 9th. A World sugar shortage this year of more than 250,000 tons was officially predicted to-day by the Department of Commerce. (R. pp. 74, 75.)

That is, it was estimated that there would be 476,000 tons of sugar more than the world would need. And because there would not be a million tons the world could not consume instead of 476,000 tons, the world woke up on Wednesday, February 14, to find that consumers had to pay a cent a pound more for sugar than was being paid the day before. In other words, there was extorted from the people of the United States about \$2,000,000 per week, not because there was any prediction of an actual shortage in sugar, or that there would come a day within the period of time about which anyone would undertake to prophesy, when one would want sugar and there would not be an abundance to meet his every want, but because the margin of excess would be only 476,000 tons.

Previous experience, especially the experience of but ten years before, taught that the expectation of

an excess of consumption over production would stimulate production for the ensuing year, and would quickly depress consumption; and it was well known that sugar taken from the factories for the year 1921 and 1922 had increased 2,482,000 tons over that taken during the previous year and was 1,180,000 tons in excess of consumption before the war, which clearly indicated that a large stock was being held in reserve by the middlemen and consumers. And therefore not only was the estimated increase of 350,000 tons in consumption not justified, but the probabilities were that it would fall below what it had been the previous year.

Moreover, there was no new information contained in the statement issued by the Department of Commerce. There was not a fact stated therein that had not for some time been known to every man operating on the Exchange or connected with the sugar industry. Mr. Gilmour, an expert witness for defendants, in his argument attempting to justify the advance in the prices of sugar, quotes the following from the issue of the "International Sugar Journal" for December, 1922:

PRODUCTION AND CONSUMPTION.

Last month we published Willett & Gray's preliminary estimates of the 1922-23 world's sugar crops. They revealed, as that eminent firm of statisticians themselves remarked, that there is very little change indicated for any of the important sugar crops of the world, particularly those of cane sugar, which total

practically the same as those of 1921-22. In the Continental United States the output of beet and cane is expected to be some 335,000 long tons less than last year; on the other hand, Europe is expected, bar accidents, to increase the beet sugar output by 644,000 long tons.

The net result of all the sugar crops is estimated by Willett & Gray as at most an increase of some 362,000 tons. Unfortunately, the world is faced by the fact that as compared with last December, the carry-over into 1923 is to be less by the huge amount of one million to one and a half million tons. *Give therefore a maintenance only of the 1922 demand for consumption, a shortage will develop during 1923 which is bound to send the price of sugar up still higher.* There are, it is true, those who argue that the 1922 consumption is not a true one, but is the result of the restocking of invisible supplies which had diminished during the abnormal post-war years, and that therefore 1923 will show a decreased consumption. But there is apparently little or no evidence to support this view, while the contrary is indicated by the fact that the trade distributing channels generally are too well stocked. More probable is it that the Old World is getting out of the restrictive groove in which the war landed it and is seeking a bigger per capita consumption, while the New World, so far as the United States is concerned, has developed a permanently increased demand for sugared drinks to take the place of the prohibited alcoholic beverages.

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*The result is that in 1923 sugar consumption will have overtaken and passed production. The producer will hence be in receipt of a much more remunerative price for his sugar, which will *inter alia* give him the means to enlarge his output, either by laying down more efficient machinery or else by increasing his cane crops and milling a large output of cane. (R. p. 96.)*

Therefore, as far back as December, 1922, the trade generally was thoroughly familiar with the expectation that consumption of sugar would very substantially exceed production.

Another significant fact is thus incidentally stated by Mr. Gilmour:

To state that these "future" operations were simply a matter of paper speculation is entirely to try to cloud the question, for the largest sellers at all times were those who represented actual producers, or those who had bought actual sugar for arrival in the United States at a future date and sold "futures" on the Exchange as a hedge. (R. p. 97.)

This conclusively shows that both the producers and the purchasers of sugar and their representatives were all the time satisfied with the prevailing prices, and knew of no reason justifying an advance, or they would not have been hedging to secure the existing price.

Therefore the establishment of the claim that the report of the Department of Commerce was the cause of the advances in sugar prices would be a

condemnation of the Sugar Exchange. If the report imparted information with which the members of the Exchange were not familiar, the claim that the Exchange performs a useful function in securing advance reliable information with reference to the conditions of sugar crops is conclusively refuted. There was nothing in the report which was not known to or could not have been easily ascertained by any member of the Exchange. If it was the *form* and not the *substance* of the report that caused the orgy of trading and the consequent advances in prices, the Exchange certainly has no proper place in the economic life of the country. It may be that the report was "an *adequate* cause for the abrupt and sudden rise in prices," considering the organization of and the operations on the Exchange and its influence upon prices, but it certainly was not a *sufficient* cause to have produced the least disturbance in the market *in the absence of a piece of machinery of the nature of the Exchange*. Moreover, if the headlines and introduction of the report were seized upon by the owners of large quantities of raw sugar or by speculators as an excuse for and a means of producing a panic on the Exchange resulting in the abrupt and sudden rise in prices, the existence of an instrumentality that can be, and is, so manipulated is a menace to the public welfare and violative of the Anti-Trust Act, and it should be suppressed.

Estimates of the Cuban crop made some time subsequent to the sudden and abnormal advance in

February are cited as a justification of the high price of sugar. For instance, in the petition it is alleged that "the estimates of four recognized authorities of the crop for 1922-1923 are as follows: Guma-Mejer (Cuba), 3,800,000; Willett & Gray (U. S.), 4,000,000; Department of Commerce (U. S.), 4,000,000; H. A. Himely (Cuba), 4,102,857. (R. pp. 18, 19.) In the answer it is admitted—

- that the estimates of four of the recognized authorities, to wit, Guma-Mejer, Willett & Gray, Department of Commerce, and H. A. Himely, on the crop for 1922-1923 were, as of the date when they were made, as stated in complainant's bill, but they allege that since the date of said estimates two of said recognized authorities have revised and reduced their estimates, and that Guma-Mejer on April 25th, 1923, further reduced his estimate from 3,800,000 tons to 3,670,000 tons, and that H. A. Himely, on April 20, 1923, reduced his estimate from 4,102,857 tons to 3,735,000, or approximately a quarter of a million tons. (R. p. 53.)

However, *these revised estimates could have had nothing whatever to do with the agitation on the Exchange and sudden skyrocketing of prices from February 9 to 14.* They are cited, and were probably made to serve, as an excuse for keeping up the prices and as justifying advances up to the filing of the petition.

DAILY FLUCTUATION OF PRICES.

That the general condition of the sugar industry and the existing or prospective relationship between

supply and demand were not responsible for the prices of sugar as published from day to day, but that they were the result of manipulations and speculations on the Exchange, is conclusively shown by a study of the daily change in prices. The petition contains a table showing the "Closing prices on New York Coffee and Sugar Exchange for each trading day from February 1, 1923, to April 16, 1923." (R. p. 20.) With reference to this table it is said in the answer:

* * * these defendants admit that the table therein contained showing the closing prices on the New York Coffee and Sugar Exchange for each trading day from February 1, 1923, to April 16, 1923, is substantially correct, and they allege that said trading for the most part was subsequent to the said publication by the United States Department of Commerce. (R. p. 55.)

This table is here reproduced, adding just before the price each day for each delivery month the amount of advance or decline from the previous day's price. The plus sign indicates an advance from the previous day and the minus sign a decline.

Closing prices on New York Coffee and Sugar Exchange for each trading day from February 1, 1923, to April 16, 1923.

	March delivery.	May delivery.	July delivery.	September delivery.
Feb. 1.....	\$3.56	\$3.65	\$3.76	\$3.84
2.....	+0.13 3.69	+0.12 3.77	+0.12 3.88	+0.12 3.96
3.....	- .02 3.67	- .02 3.75	- .02 3.86	- .03 3.93
5.....	- .05 3.62	- .04 3.71	- .04 3.82	- .04 3.89
6.....	+ .24 3.86	+ .16 3.87	+ .17 3.99	+ .18 4.07
7.....	+ .10 3.96	+ .08 3.95	+ .06 4.05	+ .04 4.11
9.....	+ .11 4.07	+ .12 4.07	+ .12 4.17	+ .12 4.23

Closing prices on New York Coffee and Sugar Exchange for each trading day from February 1, 1923, to April 16, 1923—Continued.

	March delivery.		May delivery.		July delivery.		September delivery.	
Feb. 9.....	+\$0.21	\$4.28	+\$0.25	\$4.32	+\$0.25	\$4.42	+\$0.23	\$4.46
10.....	+.15	4.43	+.29	4.61	+.40	4.82	+.45	4.91
13.....	+ 1.00	5.43	+ 1.00	5.61	+ 1.00	5.82	+ 1.00	5.91
14.....	-.18	5.25	-.21	5.40	-.42	5.40	-.41	5.50
15.....	-.36	4.89	-.38	5.02	-.22	5.18	-.22	5.28
16.....	+.18	5.07	+.20	5.22	+.17	5.35	+.21	5.49
17.....	+.21	5.28	+.23	5.45	+.23	5.58	+.23	5.72
19.....	-.15	5.13	-.14	5.31	-.14	5.44	-.15	5.57
20.....	+.07	5.20	+.06	5.37	+.06	5.50	+.07	5.64
21.....	+.26	5.46	+.28	5.65	+.27	5.77	+.23	5.87
23.....	+.08	5.54	+.08	5.73	+.06	5.83	+.07	5.94
24.....	-.22	5.32	-.22	5.51	-.24	5.59	-.24	5.70
26.....	-.22	5.10	-.28	5.23	-.27	5.32	-.29	5.41
27.....	-.02	5.06	-.04	5.19	-.07	5.25	-.07	5.34
28.....	+.40	5.48	+.34	5.53	+.37	5.62	+.37	5.71
Mar. 1.....			+.12	5.65	+.12	5.74	+.11	5.82
2.....			-.07	5.58	-.09	5.65	-.08	5.74
3.....			-.17	5.41	-.17	5.48	-.17	5.57
5.....			+.06	5.47	+.07	5.55	+.05	5.62
6.....			+.10	5.57	+.11	5.66	+.14	5.76
7.....			+.01	5.58	-.02	5.64	-.03	5.73
8.....			+.17	5.75	+.20	5.84	+.22	5.95
9.....			-.09	5.66	-.08	5.76	-.08	5.87
10.....			+.03	5.69	+.04	5.80	+.03	5.90
12.....			+.17	5.86	+.19	5.99	+.19	6.09
13.....			-.10	5.76	-.10	5.89	-.09	6.00
14.....			+.02	5.78	+.03	5.92	+.03	6.03
15.....			+.01	5.79	-.01	5.91	+.01	6.04
16.....			-.05	5.74	-.04	5.87	-.04	6.00
17.....			+.02	5.76	+.05	5.92	+.05	6.05
19.....			-.03	5.73	-.02	5.90	-.01	6.04
20.....			-.14	5.59	-.13	5.77	-.12	5.82
21.....			-.09	5.50	-.08	5.69	-.08	5.84
22.....			+.18	5.68	+.19	5.88	+.20	6.04
23.....			-.13	5.55	-.13	5.75	-.14	5.90
24.....			-.11	5.44	-.09	5.66	-.10	5.80
26.....			+.08	5.52	+.07	5.73	+.07	5.87
27.....			+.14	5.66	+.15	5.88	+.18	6.05
28.....			-.03	5.63	-.05	5.83	-.06	5.99
29.....			-.01	5.62	-.01	5.82	-.02	5.97
Apr. 2.....			-.05	5.57	-.05	5.77	-.05	5.92
3.....			+.01	5.58	+.01	5.78	+.01	5.93
4.....			+.04	5.62	+.04	5.82	+.04	5.97
5.....			+.13	5.75	+.14	5.96	+.14	6.11
6.....			+.01	5.76	+.01	5.97	+.02	6.13
7.....			-.00	5.74	-.00	5.97	-.02	6.11
9.....			+.12	5.88	+.14	6.11	+.17	6.28
10.....			+.03	5.91	+.03	6.14	+.01	6.29
11.....			+.01	5.92	+.01	6.15	+.01	6.30
12.....			-.06	5.86	-.09	6.06	-.10	6.20
13.....			-.00	5.86	-.00	6.06	+.01	6.21
14.....			+.01	5.87	+.00	6.06	+.00	6.21
16.....			+.10	5.97	+.11	6.17	+.10	6.31

Mr. Dierck's statement contains a table showing the prices of spot sugar each day from February 1 to April 21. That table is here reproduced, and there is added or subtracted the amount that would equalize the price with the price the same day for the nearest futures up to April 16, the last date given in the table appearing in the petition. For illustration, on February 1 the price for spot sugar was \$3.52, which plus 4 cents equals \$3.56, the price of March futures; on February 8 the price for spot was \$3.77, which minus 10 cents equals \$3.67, the price of March futures. After February the nearest futures were for May.

1923.		1923.		
February	1.....	\$3.52+4	March 7.....	\$5.40+18
"	2.....	3.64+5	" 8.....	5.56+9
"	3.....	3.77-10	" 9.....	5.58+8
"	5.....	3.71-9	" 10.....	5.52+17
"	6.....	3.77+9	" 12.....	5.64+22
"	7.....	3.89+7	" 13.....	5.64+12
"	8.....	4.01+6	" 14.....	5.64+13
"	9.....	4.21+7	" 15.....	5.64+15
"	10.....	4.27+16	" 16.....	5.64+10
"	13.....	5.26+17	" 17.....	5.64+12
"	14.....	5.02+23	" 19.....	5.52+21
"	15.....	4.77+12	" 20.....	5.64-5
"	16.....	5.02+5	" 21.....	5.44+6
"	17.....	5.07+21	" 22.....	5.52+16
"	19.....	5.27-4	" 23.....	5.52+3
"	20.....	5.14+6	" 24.....	5.52-8
"	21.....	5.27+15	" 26.....	5.38+14
"	23.....	5.52+2	" 27.....	5.52+14
"	24.....	5.52-20	" 28.....	5.52+11
"	26.....	5.38-28	" 29.....	5.52+10
"	27.....	5.52-44	April 1.....	
"	28.....	5.52-4	" 2.....	5.58-1
March	1.....	5.64+1	" 3.....	5.52+6
"	2.....	5.44+4	" 4.....	5.52+10
"	3.....	5.52-11	" 5.....	5.64+11
"	5.....	5.26+21	" 6.....	5.64+12
"	6.....	5.38+19	" 7.....	5.72+4

1922.		1923.	
April 9.....	\$5.76+12	April 16.....	\$5.89+8
" 10.....	5.89+2	" 17.....	6.02
" 11.....	5.89+3	" 18.....	6.27
" 12.....	5.39-3	" 19.....	6.28
" 13.....	5.89-3	" 20.....	6.14
" 14.....	5.58+29	" 21.....	6.27

(R. p. 76.)

There are two striking features shown by these tables:

First, the daily variation of the prices; and, second, that there was not a uniform advance, but at times a marked decline. The line of prices is as variable as the tracing of a seismograph recording the tremors of an earthquake.

The pressure from supply and demand is constant, or swings slowly from one side to the other. The supply of an article does not become exhausted or materially depleted within a day or a week unless it is limited in quantity and confined to one locality and is subjected to the ravages of fire, flood, or other destructive agency. And it is wholly abnormal for a demand for an article to be greatly increased overnight. *Certainly there was nothing unusual happening to the sugar crops, or the supply of sugar on hand between February 1 and February 14, or more particularly between February 10 and 13. Nor, so far as the record discloses, had there been one pound added to the rate of consumption or to the demand for sugar. Between February 10th and 13th, who had tried to purchase a pound of sugar and could not get it? Who had ordered spot sugar, or made an order for March, May, July, or September delivery and had been met*

with the suggestion that there would be the least difficulty in procuring it? Who had intimated that there would come a time when a single spoonful of sugar for use in coffee would have to be conserved? And yet over Sunday and a holiday raw sugar for each delivery month had advanced a dollar on the hundred pounds.

But if some reason existed for the \$1.00 per hundred advance of futures from February 10 to 13, what reason was there that on the 14th spot sugar should **decline** twenty-four cents, and futures should **decline** eighteen cents for March, twenty-one cents for May, forty-two cents for July, and forty-one cents for September; and that on the 15th spot should further decline twenty-five cents; and March futures decline thirty-six cents; May, thirty-eight cents; July, twenty-two cents; and September, twenty-two cents, making a total decline in two days of forty-nine cents for spot; sixty-four cents for March; fifty-nine cents for May; sixty-four cents for July; and sixty-three cents for September; and that thereafter for two days they should again **advance** spot, twenty-five and five cents, respectively; for March delivery, eighteen and twenty-one cents; for May delivery, twenty and twenty-three cents; for July, seventeen and twenty-three cents; and for September, twenty-one and twenty-three cents; and that on the following trading day, the 19th, spot should further advance twenty cents, while futures declined: March deliveries fifteen cents; May, fourteen cents; July, fourteen cents; and September, fifteen cents. Were crops being planted and destroyed, or droughts and rains following each other in such rapid succession?

Every intelligent person knows that the law of supply and demand did not produce these fluctuations in prices. There is not a word of testimony in the record that suggests that these sudden and continuous fluctuations were due to anything else than the unnatural conditions surrounding the sugar traffic. And as the prices were made upon the Exchange, it alone must be held accountable for them. Nor does it require, to locate the exact cause, any extended research into the affairs of the Exchange. *It is sufficient to know that during every trading day hundreds of transactions were made, averaging during the month of February 1,335 per day, and that more than 99½ per cent of all these transactions were settled through the Clearing House by rings and matching; and that those engaged in these transactions never had any intention to deliver or receive actual sugar, but were only concerned in so manipulating the prices as to realize a profit from the margins arising from the advance or decline during the day.*

**OTHER EVIDENCE SHOWING THAT PRICES WERE DUE TO
SPECULATION ON THE EXCHANGE.**

Other evidence showing that the high prices of sugar were due to speculations upon the Exchange and not to actual conditions existing in the sugar industry is as follows:

Wm. W. Gardiner, as heretofore stated, is one of the editors of the Weekly Statistical Sugar Trade Journal, a journal published by Willett & Gray and quoted from more than any other authority in

giving statistics and general information relative to the sugar industry. This witness says:

* * * that beginning about February first, 1928, the transactions in the purchase and sale of contracts for future delivery of raw sugar greatly increased on the floor of the said Exchange, and the speculation in such contracts became very great and the prices made and quoted on the floor of said Exchange for such contracts were greatly enhanced, and at the same time the prices obtaining in actual transactions in the purchase and sale of raw and refined sugar were correspondingly enhanced, although as of that time there was no existing shortage of supply of either raw or refined sugar available for use on the markets of the United States; that the prices since that time established both on the floor of the Exchange and in the actual transactions in the sale and purchase of raw sugar have been largely the immediate and direct result of the tremendous speculative operations taking place on the floor of the said Exchange.

Deponent further States that, based upon accurate information as to the present available supplies of raw sugar both on the Island of Cuba and in the United States, there is no existing shortage of raw sugar for sale on the markets of the United States, nor is there any existing shortage of refined sugar for sale on such markets, nor is there any reasonable expectation in the near future of any shortage of the supply of raw sugar available

for sale in actual transactions taking place on the markets of the United States. (R. pp. 163-4.)

Walter Lewis, an accountant in the employ of the Government, says that the Weekly Statistical Sugar Trade Journal shows an available stock of raw sugar on hand in the United States and Cuba as follows: February 8, 1923, 541,057 tons; March 8, 872,371 tons; April 12, 1,326,911 tons. (R. p. 166.)

William A. Jamison, a member of the firm of Arbuckle Bros.; Earl D. Babst, president of the American Sugar Refining Company; James H. Post, president of the National Sugar Refining Company; Frank C. Lowry, a member of the firm of R. Atkins & Company; and Pierre J. Smith, president of the Federal Sugar Refining Company, each states that during the current calendar year his concern has been able to purchase all the raw sugar required in the conduct of its business, provided it paid the price demanded. (R. pp. 121, 123, 126, 125, 120.)

Jacques R. Haas, vice president of Loft (Inc.), manufacturers of candy; Arthur C. Hoffman, vice president of the Great Atlantic & Pacific Tea Company, owners of 7,500 branch houses in 2,187 cities in 30 States, and engaged in the distribution of sugar, coffee, tea, etc.; John A. Badenoch, vice president of Park & Tilford, a corporation engaged in the manufacture of candy, each says that his concern has experienced no difficulty in purchasing all of the refined sugar required in the conduct of its

business, provided it paid the price demanded. (R. pp. 128, 130, 131).

David A. L'Esperance, Special Assistant to the Attorney General, says—

that on April 19, 1923, within thirty minutes after the filing of the petition in this cause by the United States, a member of the defendant, New York Coffee and Sugar Exchange (Inc.), called the deponent over the telephone at his office in the Old Post Office Building and stated as follows: "News has just come in over the ticker from Washington that the Government has filed a bill against the Exchange. Is that true? *Hell is being raised down here and a near panic is on on the floor of the Exchange. Margins are being called. The market has dropped off seventy-five points from the opening.* (R. p. 169.)

Mr. George W. Lawrence, witness for the defendant, says that he is the member of the Exchange to whom Mr. L'Esperance referred; and that, while he does not recall the exact language he used, the substance of what he said is correctly stated by Mr. L'Esperance. He doesn't deny that there had in fact happened on the Exchange what he had stated to Mr. L'Esperance; but as an excuse for the heated condition picturesquely described over the phone he says:

At the time of said conversation, neither the Exchange nor the Clearing Association, nor any member of either exchange, had, so far as I know, been served with a copy of the Bill, and there was a complete ignorance on my part, and, as I believe, on the part of all the

members of both the Exchange and the Clearing Association, of the contents of the Bill. I had called the counsel for the Exchange, Mr. Wm. Mason Smith, over the telephone and been advised by him that he had not seen a copy of the Bill and did not know its contents, and that his request to Mr. L'Esperance for a copy of the Bill had been refused on the ground that the Government was short of copies. It was, as I verily believe, more than two hours after the news was reported on the ticker before either the Exchange or the Clearing Association or any member of either was able to obtain or see a copy of the Bill. The natural consequence of such tactics on the part of the Government was the great disturbance in trading on the Exchange which resulted. In the absence of other information than the information given out by the Government in Washington and reported over the ticker, it was natural that those holding open contracts on the Exchange should desire to close them out, with the resulting decline of 75 points in the market from the opening. (R. pp. 87-88.)

The Government of course had no thought of making an experiment, but a clearer demonstration of the absurdity of the claim that the supply of and demand for sugar regulates prices on the Exchange could not have been made. On this occasion the prices dropped seventy-five points in thirty minutes, just because the *Exchange was attacked by the Government*, which could have nothing to do with the

condition of the sugar crops, or the demand for sugar by the public.

Attention is called to the report of the Special Commission on the Necessaries of Life of the Commonwealth of Massachusetts, made in response to a special act of the legislature directing it to investigate and report upon the sugar prices. Mr. Hultman, the chairman, who shows that he is eminently qualified for the important position which he occupied, states that their commission had a hearing, and had before them those whose business required them to be thoroughly familiar with the sugar industry in that section of the United States; and he gives the names of a number of gentlemen who appeared. (R. p. 132.) In addition to the hearing they sent out 1,000 questionnaires, and received 800 replies from manufacturers of candy, ice cream, sirup, and jam, and wholesale and retail grocers, packers, and others; and upon the information thus obtained the commission prepared and filed a report, which is exhibited with Mr. Hultman's statement; and in that report they expressed the opinion:

The recent rapid rise in the price of sugar was apparently caused by an adroit manipulation of the economic law of supply and demand. On the rising market many dealers in and users of sugar were stampeded into buying for speculative or hoarding purposes.

* * * * *

During the recent abnormal demand for refined sugar dealers experienced no difficulty

in obtaining delivery of sugar from the refiners to meet their requirements.

Much of the sugar purchased in the last three months, when the sugar shortage propaganda was being widely circulated, was apparently bought for speculative purposes and future use. This will, of course, tend to lessen the demand for sugar next summer and fall. The price of sugar, which is more than 50 per cent above the price last year, should restrict the demand for and use of it.

The commission finds that the increase in the tariff on sugar last September of less than one-fifth of a cent per pound can not be a material factor in increasing the price of sugar more than 3 cents per pound.

The sale of a product in such a way as to secure the most for it is the primary problem of producers. The Cubans and those holding their financial obligations are now trying to recoup their losses resulting from the collapse and bankruptcy that followed the 1920 orgy of speculation in sugar.

In 1922 approximately 6,000,000 tons of sugar, which is more than the entire consumption of the United States, were traded in on the New York Coffee and Sugar Exchange, but only 55,000 tons (less than 1 per cent of the volume of trading) were actually delivered through the channels of the Exchange. Under the rules of the Exchange the seller of "futures" may buy back his Exchange contract; the buyer may also sell his "futures" contract. This results in swapping of con-

tracts rather than in legitimate dealing in sugar.

The commission is of the opinion that the dealings on the New York Sugar Exchange played an important part in the recent thimblerrigging of sugar prices. (Pages 14-16 of Report.)

* * * * *

On the hearing before the Massachusetts Commission there was filed with the commission a statement by Wm. Van V. Warren, New England manager of the American Sugar Refining Company, which is exhibited with the commission's report. The important parts of Mr. Warren's statement read as follows:

As distinguished from the purchase and sale of raw sugar for actual delivery to the refiners, there is a speculative buying and selling of raw sugar futures on the New York Sugar and Coffee Exchange. Our company is not a member of this Exchange and does not operate thereon, and so far as I am advised the same situation is true of other refiners. The dealings on that Exchange are by operators and speculators. It is no doubt a fact that the prices fixed by these corporations, to a considerable degree, control the price at which actual raw sugar is offered to the refiners in New York.

The CHAIRMAN. What do you mean by operators—speculative operators?

Mr. WARREN. Speculative operators.

The CHAIRMAN. Speculative operators and other speculators practically control the New York market?

Mr. WARREN. Coming now to discussion of the unsettled condition that has existed in the sugar market for the last six weeks. I will not burden you with a statement of the conditions leading up to the sugar crisis of 1920 and the trend of the market since that time. However, the reverses of 1920, the elimination of rationing regulations in foreign countries, and the readjustment of the world's markets, have all had their effect on the world's sugar situation, and indirectly an effect on the situation in this country. The first serious disturbance in the industry of the United States this year was early in February, when "sugar shortage" stories were broadly circulated as the result of an unfortunate heading on an advance report of the world's sugar position, issued by the Department of Commerce. At about the same time the Cuban crop estimate of 1923 was substantially reduced by a recognized authority. These two factors brought about unprecedented speculation on the Sugar Exchange and hysteria in the trade, both of which have had the effect of maintaining an unsettled condition until the present time. The facts surrounding the beginning of this disturbance are as follows:

On February 9th the Department of Commerce released, for use not earlier than February 12th, a summary of an article on Sugar Production and Consumption, to be published in the Commerce Reports issued February 12,

1923. The advance release contained the following headlines:

"TREND OF WORLD SUGAR PRODUCTION AND CONSUMPTION.—PRODUCTION FOR 1923 ONLY 125,000 TONS HIGHER THAN LAST YEAR.—CONSUMPTION NEEDS ESTIMATED AT 725,000 TONS ABOVE PRODUCTION."

This story was featured in the press in sensational headlines as early as the morning of February 10th. * * *

While the report of the Department contained the headlines above quoted, it should be said that a careful analysis of it would have disclosed that instead of predicting a sugar shortage it, in fact, showed that there would be a surplus at the end of 1923, if the supply of sugar carried over from last year was taken into consideration. In other words, the body of the statement showed that the carry-over at the end of 1922 was approximately 1,200,000 tons, and that if the world's consumption in excess of production for 1923, which was estimated to be 725,000 tons, was deducted from the carry over from 1922, there would be a surplus at the end of 1923 of approximately 476,000 tons. This part of the statement was later called to the attention of the public, both by Secretary Hoover and other representatives of the Department. However, the headlines of the Department's advance notice had been so featured and given such wide publicity that the subsequent announcements had but little effect in quieting the highly excited sugar market.

Just about the same time, on February 12th, Guma-Mejer, the generally accepted authorities on Cuban production, reduced their former estimate of the 1923 Cuban crop by approximately 400,000 tons. Their estimate of the 1923 Cuban crop, on December 18, 1922, was 4,193,500 tons. The revised estimate of February 12th placed the crop at 3,800,000 tons.

The public had the opportunity, over the week end of February 10th and the holiday of February 12th, to digest both of these alarming reports. On February 13th the raw-sugar market reflected advances unknown in the trade since 1920, and enabled speculative interests to advance prices in the maximum amount permitted in one day on the New York Sugar Exchange. I do not think that I could better describe the situation existing at that time than to quote the Daily Sugar Trade Journal of Willett & Gray of February 13, 1923.

"A widely speculative and very dangerous market has appeared in raw sugars. At the opening of the Sugar Exchange to-day sugar options were up 1 cent a pound and this brought options on the Exchange up to the Exchange rule of allowing only a fluctuation of 1 cent a pound during a day. This speculative movement commenced on Saturday, the option market on that date being up from 20 to 40 points, making a total advance in options since Friday night of about 1.60 cents a pound. This naturally excited the actual raw-sugar market and speculators were able to bid correspondingly high prices for actual Cubas,

against which they sell options on the Exchange, which resulted in sales to-day of Cubas at $5\frac{1}{8}$ cents c. & f. equal to 6.91 cents duty paid, $5\frac{3}{8}$ cents c. & f. (7.16 cents), $5\frac{1}{8}$ cents c. & f. (7.44 cents), and about 6,000 tons of San Domingoes, Peruvian, Haytian, etc., sugars at 5 cents and $5\frac{1}{8}$ cents c. i. f. New York, but with operators now bidding $5\frac{3}{8}$ cents c. & f. without obtaining Cuban sugars. This is an advance of 1 cent a pound over sales made on Saturday to speculators of Cubas at $4\frac{1}{8}$ cents c. & f. for Cubas. The advance is directly attributable to the misleading statement issued by the U. S. Department of Commerce, indicating a decided scarcity of sugar throughout the world and which was followed this morning by a reduction in the Cuban crop estimates by Messrs. Duma-Mejer, of Havana, to 3,800,000 tons."

Willet & Gray weekly of February 15, 1923, stated:

"Refiners took the only course possible with the wildly speculative raw market and all withdrew as sellers of refined sugar during the wild advance in raws, leaving the quotation nominal at 7.25 cents less 2 per cent."

In the weekly issue of February 21, 1923, Willett & Gray said:

"The market during the week has been entirely under the influence of speculation, refiners participating in the purchasing of raws to only a limited extent and then only replacing with raws the refined sugar which they have sold at present refined prices. Refiners appear to be acting conservatively, undoubt-

edly believing that present prices are unwarranted by actual conditions, although the speculators, particularly that class which has been misled by the reports of a shortage, have been able to push up options on the Exchange sufficiently high to pay $5\frac{1}{4}$ cents c. & f. (7.03¢) for Cubas."

On February 9th sales of raw sugar were made at 4 cents and $4\frac{1}{8}$ cents c. & f. On February 14th raw sugar was offered at prices as high as 6 cents c. & f. with no buyers. On February 15th there was a temporary reaction and raw sugar was offered at $4\frac{3}{4}$ cents c. & f. From that date the raw market increased to $5\frac{1}{2}$ cents on February 23rd. There was a slight decline on February 26th and 27th, but from that date the market was strong and the peak price of $5\frac{3}{4}$ cents was reached on March 12th. Since that time the price of raw sugar has fluctuated between $5\frac{1}{2}$ cents and $5\frac{5}{8}$ cents, cost and freight. These increased prices for raw sugar forced the refiners to make corresponding increases in the price of refined sugar. The first increase after the disturbance in the raw-sugar market was on February 15th, when the price was increased from 7.25, the price prevailing on February 9th, to 8.25, although one refiner quoted 8 cents and others named 8.30. On February 23rd the price was increased to 9 cents, on March 2nd it was increased to 9.15, and on March 13 to 9.30 cents. There was little business done at the latter figure, and on March 31st the price was reduced to 9 cents. During all of this period there was some difference in the prices as be-

tween the different refiners. The maximum increase in the price of raw sugar, cost and freight, since February 9th, has been approximately $1\frac{3}{4}$ cents per pound. The price of refined sugar to-day of 9 cents is an increase of $1\frac{3}{4}$ cents per pound over the price in effect on February 9th. (R. 136-139.)

There can not, therefore, remain a shadow of doubt that it was the agitation on the Exchange that produced the sudden and abnormal rise in the prices of sugar, nor can it make any difference what the immediate cause of the agitation was. There would have been no agitation if there had been no Exchange, or if it had been properly and legally organized; and no abnormal rise in prices would have resulted.

Furthermore, it was fully realized when the Exchange was organized that there would come days of wild excitement accompanied with violent advances, declines, or fluctuations in prices. This is shown by the following provisions in Trade Rule 3 (Charter, By-Laws & Rules, p. 74):

To avoid abnormal fluctuations of price and injurious speculation incident thereto, trades for future delivery in any month, during any one day, shall not be made at prices varying more than two cents per pound for coffee and one cent per pound for sugar above or below the closing bid price of such month of the preceding business session of the Exchange.

Nor shall trades in any month be made in any one day at an advance of more than two cents per pound for coffee and one cent per

pound for sugar above the lowest previous price of such month on that day, or a decline of more than two cents per pound for coffee and one cent per pound for sugar below the highest previous price of such month on that day.

For the purpose of this Rule, the closing bid price shall be not less than the minimum price prescribed therein.

FUNCTIONS OF AN EXCHANGE AND ITS ECONOMIC EFFECT.

Exchanges for dealing in commodities have been bitterly attacked and as earnestly defended, and no doubt some reason exists for both the attack and the defense. If an exchange performs a valuable economic service, to that extent it is not only tolerable but commendable. But, like other organizations, though it performs some valuable functions, it may be so perverted that the evils arising from its activities are greater than its benefits. In such case, if within the jurisdiction of the court, its evil practices should be eliminated and the good be continued, provided the evil and the good can be segregated.

It is useless to produce an article if it never reaches a consumer. Between its production and its consumption it may be necessary that it be subjected to one or more processes of preparation, as the conversion of wheat into flour and subsequently the flour into bread. Each party performing a process of manufacture may for the time be the owner of the commodity. Two things are necessarily incident to these changes of ownership and the ultimate con-

sumption of the commodity. One is its transportation, and the other is the agency through or by which its ownership passes from one person to another. *The sole legitimate object of an exchange is to facilitate this change of ownership.*

An exchange is supposed to be composed of a large number of those who are engaged in the same business; that is, are engaged in buying and selling the same commodity. If it is an effective exchange the trade thereon must be so extensive as to control the market price of the commodity. In fact an exchange must control the price, or it would be deserted by its members. For reasons heretofore stated, we will use for illustration commerce in wheat with the supposition that the wheat exchange is organized as the sugar exchange is proven in this case to be organized. In so far as the exchange facilitates the transfer of wheat from the farmer to the miller to that extent it is an economic factor for good. It can readily be understood how an organization composed of those engaged in buying and selling wheat might serve as a convenience for both farmers and millers. If it were only a place for the buyers and sellers, or those acting as *bona fide* agents of those having wheat to sell and actual buyers of wheat, to meet and transact their business with each other, it would certainly facilitate the exchange of that commodity. Instead of one who desires to make a sale for himself or as agent being compelled to hunt through the offices of several brokers for a purchaser he can step into the exchange and make an offer to

all at once; or, if one wants to buy he can step into the exchange and readily find a seller. Nor can any legitimate criticism arise from the fact that the wheat is sold or bought for future delivery. The farmer generally sells immediately after his crop is threshed; but the buyer expects to carry it for a time, knowing that the miller will want to buy in such quantities, and for delivery at such times, as will keep his mill running and will supply his customers. Up to this point it can be easily understood that an exchange serves a useful purpose in that it facilitates the making of *bona fide* sales and purchases of wheat for immediate or future delivery.

But as the middlemen's business is speculative in its nature the spirit of speculation becomes more pronounced, and a system of selling and buying "futures" is devised. While a "future" is nominally a contract for wheat to be delivered in the future, yet it must be carefully distinguished from a real purchase of wheat for future delivery. In the mind of the traders it is a something separate and apart from the wheat. In fact it is the difference in the price of wheat when the trade is made and the price when canceled. And each knows that the cancellation will take place at the close of the day's business, and each guesses that it will be a profit to him but knows that it may be a loss. In such a transaction both buyer and seller know that they are not *trading in wheat*, but are *gambling in margins*. Neither puts up money or security for the price of the wheat, but is required to cover the *margin*.

These margins represent the rise and fall in the price of real wheat on the market; yet it is not the trading in real wheat that controls the margins, but the trading in the margins that controls the price of wheat. Why this trading in margins? Is it to facilitate the passage of wheat from the producer to the miller? Certainly not. Nothing is intended to be accomplished beyond mere trading—not in the commodity itself, but in margins.

There are one or two simple trades for which transactions on the exchange can be easily substituted, but the direct transaction is just as convenient. The first form of hedging above illustrated is one of them. A farmer wants to sell a thousand bushels of wheat to be delivered two months hence, when the existing price for delivery on that date is, say, \$1.50 per bushel. He sells a thousand bushels on the exchange. The price drops to \$1.25; and when the date of delivery approaches he buys a thousand bushels at that price and cancels his contract, making 25 cents profit per bushel. He also sells his wheat at \$1.25, and thus realizes \$1.50. The same result would follow if the price advanced. Of course the commission for the transactions always has to be deducted. But why not sell his wheat on the exchange for *actual delivery*? Because the exchange is organized to facilitate *trading* and not the *handling of wheat*. Its members do not want anything to do with wheat. They just want to *trade*. They tax the passing of wheat through the exchange, and so formulate their rules as to prevent its delivery there. The dealer in real wheat

must trade *outside* the exchange. Its doors are open only to the trader *in margins*, who is more of a gambler than he who bets on a horse race, because the gambler on the race has something more tangible upon which to place his stakes.

As it is conceded that the price of wheat in the market is controlled by the price on the exchange, it is important to determine what effect, if any, this trading in *margins* necessarily has upon exchange prices. In fact, this is the question in the lawsuit. If it has no effect—if the prices remain the same as if fixed by actual sales and purchases of wheat—then nothing can be accomplished by compelling such a modification of the rules of the exchange as to prohibit or restrict operations of this character thereon, and the court is without jurisdiction to do so. But if the price of the commodity which moves in interstate commerce is materially affected by trading in this something which has no physical existence, which is incapable of physical production or consumption, then the statute requires that such interference with interstate commerce be stopped.

An examination of the writings of economists upon the subject of exchanges will show that often the writer does not have clearly in mind the distinction between the two classes of trading, the one which involves a delivery of wheat, or is a substitute for a transaction which terminates in its delivery, and the other trafficking in margins. When such a distinction is drawn the writer, especially if he be a recognized authority, almost invariably condemns the

latter class of trading. They correctly designate the *bona fide* buying and selling of the commodity through the exchange, and some transactions which are substituted for actual sales, as speculation, and then point out how such speculation tends to fix and maintain the true price of the commodity; and all of the forces suggested by them as influencing the true prices on the exchange are those incident to legitimate trading of this character. *But are there not potential forces present in trading in margins which do not exist in bona fide trading in the commodity? And are not those which are present in both kinds of trading exerted in a different manner and to a different degree of intensity?*

If all trading in wheat were directly between the farmer and the miller the price would be controlled entirely by supply and demand. As the miller must buy wheat for future delivery, this would involve anticipated as well as present supply and demand, and future prices would necessarily depend upon conditions determined by the best judgment of those bargaining; but there would be a steady effort upon the part of the farmer to enhance prices and upon the part of the miller to reduce them. But the middleman, who buys from the farmer and sells to the miller, is therefore subjected to contending motives. He wants to buy at a low price, which tends to keep the market low, but to sell at a high price, which tends to advance the market. However, as he sells the same amount he buys, these opposing forces are about equal, and prices would

still depend upon the presnet and anticipated supply and demand. But how is it when there intervenes a large class of traders operating under a plan adopted by an exchange whose sole or principiapl business is *to deal in margins*; and whose profits or losses depend upon the advance or decline in the price of wheat upon the exchange for the day? *A very radical difference between such trading and the selling and buying of the commodity is, that the transactions are not limited in number to the actual demands of commerce in wheat.* Millers buy only the quantity they then need or expect to need, and the farmers can sell no more than they possess or the millers will buy. *But the transactions in margins have no limit.* Broker A sells heavily during the day, expecting the price to decline. If it does decline he closes out at a profit, because he sells at a higher price than that recorded at the close of business. Broker B has bought just as heavily and is just as anxious for prices to advance. And it may be urged that as there must be as much buying as selling the efforts on the one side will offset those on the other, which in a measure is true. But there is a struggle for mastery which does not exist in buying wheat from the farmer and passing it on to the miller. Fortunes may be depleted or wiped out. Resort is had to every trick of the trade. It is like a tug of war. If one side be slightly weakened, disaster comes quickly. In the midst of the pull one abandons his fellows and grabs the other end of the rope. The law of fairness has no place

there. It is war, and everything is fair in war. This battle over margins is as far removed from the steady pressure from legitimate trading which gradually lifts and lowers prices as the ordinary breeze is from a storm at sea. The storm is not raging all, or a very great part, of the time, but these extraordinary forces are always present in a greater or less degree, and a storm may break at any time.

Some of these forces are entirely absent from trading in the commodity. It may be whispered around that a prominent speculator is financially embarrassed, or that a strong combination is going to try to run a corner, or that a prominent seller has suddenly become a buyer, or a buyer a seller, or, perchance, that the Government contemplates an attack upon the exchange itself, or even that a representative of the Government has said that no facts have been ascertained to indicate that the exchange is violating the law. Any news of such character agitates the market and immediately sends the prices up or down.

Wheat has been used as an illustration instead of sugar because if an exchange is needed for any commodity it is probably wheat. Wheat is produced by tens of thousands of farmers, and is ground into flour by thousands of millers. Likewise cotton is produced by tens of thousands of cotton growers, and is spun by thousands of mills; while raw sugar is produced by but comparatively few sugar growers, or at least before it is put upon the market it becomes the property of but few persons, and is converted into refined sugar by only ten corporations, who own

sixteen refineries. And all the refined sugar is therefore put upon the market by these sixteen refineries.

Apparently it is a simple problem for raw sugar, which is manufactured in different places during certain periods of the year, to find a purchaser among the sixteen refineries, and a simple problem for these refineries to pass the refined sugar on to the wholesaler; and there can be but little excuse for such a highly organized agency as the Sugar Exchange, through which practically no actual sugar is ever delivered. There was no sugar exchange in existence in this country prior to December, 1914, and its activities were suspended from August, 1917, to February, 1920, and consequently its operation has extended over a period of only five or six years. Therefore it certainly cannot be insisted with reason that its existence is essential to the distribution of sugar in the United States.

VIEWS OF ECONOMISTS.

Mr. Diercks, in his affidavit, contends that the Exchange performs a useful function, and especially cites for his authority "The Principles of Economics," by Professor Edwin R. A. Seligman, LL. D., McVicker, professor of political economy of Columbia University; the report of the Industrial Commission of Congress made in 1901, Vol. VI; and an article entitled "Speculation and Farm Prices," in *Cyclopedia of American Agriculture*, pages 243-245. Among the authorities upon this subject probably no one stands higher than Professor Seligman. The question of

speculation in the purchase and sale of products is treated by him at considerable length; and but little can be found elsewhere on either side that is not there mentioned, and his discussion is worthy of the most careful consideration. In defining speculation, Professor Seligman says:

By speculation is meant the purchase or sale of anything in the hope of profit from an anticipated change in its price. It differs from ordinary trade only in degree, for all profit, as we have seen, has an aleatory element. The difference, however, consists in the fact that speculation concentrates and intensifies the forces which affect demand and supply (p. 359).

He then discusses what he denominates "sporadic" speculation, as follows:

Speculation, again, may be sporadic or regular. Sporadic speculation is almost as old as business itself. It is the result either of a popular frenzy or of a deliberate scheme to take advantage of a temporary occurrence. An example of the first kind is the tulip mania in seventeenth-century Holland, when the most fabulous profits were made by those who had anticipated the short-lived demand for bulbs. So also the occasional speculative "booms" in real estate at present are the cause of enormous profits, followed by corresponding losses when the bubble is pricked. In such cases speculation is due to changes in demand which it is almost impossible for individuals to foresee or to control. Supply, on

the other hand, lends itself more readily to manipulation, and deliberate attempts are not infrequently made to accomplish this end. From the efforts of Joseph to buy up the corn crop in Egypt, and from the decision of the Greek philosopher to show his practical wisdom by purchasing in advance of the vintage all the wine presses, down to the modern pools and rings, attempts to corner the market are occasionally found. While sometimes successful in minor cases, they commonly fail when on a large scale. The failure is due (a) to the immensity of the capital required, (b) to the difficulty of procuring and retaining trusty confederates whose selfish interests may often be best subserved by selling when their principal is buying, (c) to the fact that rising prices will bring to the market all the reserved stock, and (d) to the danger of the substitution by the consumer of some cheaper commodity. Thus, while the successful corner in Harlem stock in 1863 laid the foundation of the Vanderbilt fortunes, the three most picturesque and gigantic attempts of the last two decades—the Chicago Leiter corner in wheat, the Paris Secrétan corner in copper, and the New York Sully corner in cotton—have all been failures, resulting in the ruin of the speculators.

Both classes of sporadic speculation are in the end socially disadvantageous, because the speculative price is driven far above or below the true value, with resulting losses in the process of restoring the equilibrium. The inordinately high cotton prices, due to the

speculative attempts of 1904, well-nigh produced a crisis in the cotton industry in England and New England, and while the southern planters temporarily benefited the high profits led to such an increased acreage during the next season that the price fell below the cost of production. A moderately remunerative price would have been preferable to these sudden alternations of large profits and extreme losses (pages 360-361).

He then speaks of another class of speculation, as follows:

It would, however, be a mistake to assume that all speculation is of this character. Speculation could never have become a part of the normal business life of modern times if it had simply these defects and antisocial characteristics. The modern stock and produce exchanges have a definite economic function to perform (page 361).

And in discussing what he denominates "regular" speculation, he says:

The chief economic function of regular speculation consists in the assumption of risk and results in the equalization of price.

First, as to the assumption of risk. When, under the stress of modern capitalism, dealings in commodities became national and even international, the perturbations affecting market values grew to be so vast and so numerous that ordinary business was seriously compromised by the violent fluctuations in the price of the raw materials of industry. The manufacturer who bought his materials in the inter-

national market expected indeed a profit on the production of the finished article, but was unwilling to have this profit turned into loss by sudden changes in the price of the raw material. It was to secure an escape from the risks of such oscillations that a special class arose which assumed this risk and by concentrated attention derived a profit from the price fluctuations.

The first way in which risk is minimized for the ordinary business man and assumed by a regular speculative class is through the provision of a continuous open market. A cotton spinner, for instance, accepts an order for goods to be delivered in a year, and expects to begin spinning in six months. Unless he is able to buy now the cotton to be delivered then, he will be at the mercy of the chance variations in the cotton market, and although he may be the most capable of business men his entire profit may be wiped out by a rise in the price of cotton. The cotton future enables him to eliminate this risk. The same is true of futures in wheat or other commodities. It applies equally to the stock exchange. If a railway or other industry, in launching a new enterprise, had to depend on the chance investors at the time of the issue of the securities, it would be seriously hampered. The mere knowledge that at any moment there will be a ready sale on the Exchange greatly increases the circle of purchasers, many of whom may not intend to be permanent investors (pages 363, 364).

Here the author clearly refers to purchases on the Exchange in which actual deliveries are contemplated.

In speaking of hedging, he says:

A natural and more recent outcome of this attempt to avoid risk is the practice of "hedging" or "covering" transactions. An English miller, for instance, needs wheat in February and buys his supply in California, let us say, at a price of 90 cents a bushel. By the time the wheat reaches his mill and the flour has been finally disposed of, it may be September, and the price of wheat may have fallen to 75 cents, with a corresponding fall in the price of flour. To protect himself against such a loss the miller sells in February at Chicago for September delivery the same quantity of wheat for the same price as that at which he bought, 90 cents. When September arrives, he again enters the Chicago market and makes good his delivery contract by buying the wheat at the market price of 75 cents. His profits in this deal equal his losses in the other, and by this process of "hedging" contracts he eliminates all risk in price fluctuations due to the raw material. He is content to derive his gains from the legitimate profits of his milling business. Through the use of such wheat and cotton futures we thus have the paradoxical result that the business man often resorts to speculation in order to free his business from speculative influences (page 364).

In this instance the Exchange transaction is substituted for an actual purchase of wheat; and the

effect of the trade is that the miller gets his wheat at the price prevailing at the time of delivery.

He then proceeds, in further discussing what he denominates "regular" speculation, as follows:

The result of regular speculation, again, is to steady prices. If with wheat prices at 80 cents a bushel there is a prospect of a large crop, the intelligent speculator will sell short (a future), say at 70 cents, expecting to buy in at 65 cents. All this selling on the part of the bears, however, tends to reduce present prices and thus to increase consumption, which again tends to keep the future price from falling so low or so suddenly as it would otherwise have done. *Vice versa*, if a crop shortage is in prospect, prices tend to rise, the commodity becomes a "good buy" and the bulls are active. The increased purchases tend to raise present prices and to check consumption, while the owners in a rising market hold on for the prospective profit. This combination of a somewhat smaller demand and a larger supply will prevent such a sharp rise in prices as would ordinarily follow a bad crop. Speculation thus tends to equalize demand and supply, and by concentrating in the present the influences of the future it intensifies the normal factors and minimizes the market fluctuation. Speculation hence exerts a directive influence on price (pages 365, 366).

He then closes the discussion of the subject as follows:

Speculation is hence so perplexing a phenomenon because of its Januslike aspect.

So far as it has become the regular occupation of a class, differentiated from other business men for this particular purpose, it subserves a useful and in modern times an indispensable function. The expert dealer on the exchanges, who studies and prejudges the market, will in the long run secure profits by reducing risks and steadying prices. In this wider sense speculative profits are earned like other profits. On the other hand, numbers of individuals without experience or ability are constantly taking "flyers" on the exchanges and gamble in securities or commodities as they would in cards. Speculation here is as demoralizing to earnest effort and thrift as is the lottery. Moreover, even the professional dealer will often indulge in what we have termed sporadic speculation, and by an extensive manipulation of the market bring about the unsteady of prices usually connected with a "squeeze" or a "corner." Difficult as it is to draw the line in practice, the distinction between economic and uneconomic speculation is faintly recognized in the ordinary attitude toward the bucket shop as compared to the stock exchange. It will be more clearly appreciated in the future when the exchanges themselves exercise a more rigid scrutiny over the actions of their members and when business ethics will be lifted to a higher plane of social responsibility. At present speculation has its economic abuses as well as its economic function (pages 365, 366).

The distinction between the two classes, the "regular" speculators, those who study conditions

and buy and sell wheat, or whose trades upon the Exchange are substitutes for *bona fide* transactions for wheat, upon the one side, and the "sporadic" speculators, the mere gamblers in margins, upon the other, and the benefits arising from the one class of speculation and the evils from the other can hardly be more clearly drawn than is here done by Professor Seligman.

Nearly all of the article "Speculation and Farm Prices," in Cyclopaedia of American Agriculture, pp. 243-245, relates to the class of speculation which Professor Seligman calls "regular." And as no arguments are there advanced different from those stated in "The Principles of Economics" it is not worth while to quote therefrom. But this work was written for farmers; and the author seems to regard favorably everything that has a tendency to increase the price of a commodity while in the farmer's hands. He therefore, unlike all eminent economists, does not condemn even the *cornering* of the market.

In the article referred to in the Report of the Industrial Commission of Congress no consideration is given to the class of speculation denominated by Professor Seligman as "sporadic." The entire discussion, which is exhaustive and able, relates to regular, legitimate speculation, the purchase and sale of commodities for future delivery; and it has no bearing whatever on the question here presented.

Under the heading "Some Evils of Speculation," and specially discussing matching and ring settle-

ments, Dr. Henry Crosby, in his work, "Speculation on the Stock and Produce Exchanges of the United States," says (pages 186-188):

Another distinction sometimes attempted is that between *bona fide* trading and trading for differences. The latter are supposed to be "illegitimate." It has already been shown that the form of contracts is the same in both cases, and that the settlement by difference is merely a matter of convenience after the contract is made. Almost all Exchange transactions are so settled. The whole account of the function of speculation in the previous chapter refers to speculation for differences. To do away with this is to do away with the speculative market altogether. It is not that these dealings are an adjunct to real speculation; it is not that they influence or, as is sometimes said, that they intensify or magnify prices. They make prices. They are *bona fide* offers to buy or sell, and their original nature is not affected by the manner of their settlement. Furthermore, the methods of insurance used by the dealer and the manufacturer would be utterly impossible without the continuous market and settlement by differences.

The author here refers to settlements involving transactions which are substituted for actual sales. If he does not he refutes his own argument, for he continues thus:

Are all such difference dealings, however, desirable? Is it desirable that speculation

should be so widespread? Here appears the greatest of speculation, the moral evil of a reckless participation in the market by the outside public. The possibilities of making quick and large gains from fluctuations in prices lead thousands into the speculative market, who have no knowledge as to its condition and no real opinion as to the course of prices. They depend chiefly upon chance for their success. Such speculation is the merest gambling in spirit. *The evil is still further increased by the "margin" system. The speculator need not have capital enough to make his purchase, but only enough to "put up a margin" of five or ten per cent with his broker. Thus with a capital of \$10,000 he can buy or sell \$100,000 of securities (one thousand shares), and win or lose the amount of fluctuation in the value of the whole one thousand shares. The danger is correspondingly increased, since an unfavorable movement may "wipe out" his margin altogether. In other words, he is playing for higher stakes. Added to the natural tendency to gambling, are all the attractive and alluring circulars and advertisements put out by commission houses which are regardless of how many men they may lead to ruin, so long as commissions are forthcoming. The amateur speculator, moreover, often goes in beyond his means, and resorts to credit to retrieve his position. The money of others is drawn into the reckless trading; embezzlement and ruin too often follow.*

It is unnecessary to dwell here upon the disastrous moral results of such practices. In one

sense the economic and the moral effects can not be separated. Moral evil has its economic result. The fostering of the gambling spirit is always at the expense of industry. The lowering of the moral standard injures all trade relations. The instability of fortunes discourages perseverance and economy. Such indirect economic losses it is hard to estimate. There are, however, direct economic effects of speculation by the outside public of a somewhat different kind. The most apparent of these is the unsteadiness of the market in times of speculative excitement. The larger the number of irresponsible persons involved the more does trading at such times partake of the unreasoning nature of all crowd action. Furthermore, where so many are "margined" to the full extent of their available capital, any sudden movement in price may threaten their solvency and necessitate a rush to cover or to liquidate. Hence prices rise rapidly under the force of enthusiasm and then fall suddenly under the fear of panic.

LEGISLATION RELATING TO EXCHANGES.

Congress has from time to time considered and has had thorough investigation made of commodity exchanges to determine whether or not they do or do not perform a useful service; and its views have found expression in legislation, to which the most careful consideration should be given. This court in *Board of Trade of the City of Chicago v. Edwin A. Olson, United States Attorney*, decided April 16, 1923, determined the constitutionality of Chapter 369, 42 Stat. 998, which was an act entitled "An Act for the

prevention and removal of obstructions and burdens upon interstate commerce in grain, by regulating transactions on grain future exchanges, and for other purposes." Special attention is called to some of the provisions of that act as indicating wherein Congress, after the most careful investigation, reached the conclusion that the practices of the Exchange resulted in evil rather than good. In Section 3, after reciting that transactions in grain for future delivery are affected with a national public interest; that they are carried on in large volume by the public generally, and by persons engaged in buying and selling grain and the products thereof in interstate commerce; that the prices involved in such transactions are generally reported throughout the United States, and that they are utilized by those trading in and handling grain as a means of hedging themselves against possible loss through fluctuations in prices, it is declared—

that the transactions and prices of grain on such boards of trade are susceptible to speculation, manipulation, and control, and sudden or unreasonable fluctuations in the prices thereof frequently occur as a result of such speculation, manipulation, or control, which are detrimental to the producer or the consumer and the persons handling grain and products and by-products thereof in interstate commerce, and that such fluctuations in prices are an obstruction to and a burden upon interstate commerce in grain and the products and by-products thereof and render regulation imperative for the protection of such

commerce and the national public interest therein. (42 Stat. p. 999.)

And the declared purpose of the act was to prevent a continuation of the evil effects arising from the speculation and manipulation described. Section 4 of the act makes it unlawful for any person to participate in the transmission of an offer to make, or of a confirmation of, any contract or any quotation or report of the price of any contract of sale on or subject to the rules of any board of trade, or to make or execute such contract of sale, which may be used for hedging any transaction in interstate commerce in grain or the products or by-products thereof, or determining the price basis of any such transaction in interstate commerce, or delivering grain sold, shipped, or received in interstate commerce for the fulfilment thereof, except (a) where the seller is the owner of the property covered thereby, or is a grower thereof, or one party is the owner or renter of land on which it is to be grown, or is an association of such owners or growers of grain, or of such owners or renters of land; or (b) where the contract is made by or through a member of a board of trade which has been designated by the Secretary of Agriculture as a "contract market" as provided in the act, and is evidenced by a writing showing the date, the parties to the contract and their addresses, the property covered and its price and the terms of delivery, each board being required to keep its records for a period of three years, or longer if the Secretary of Agriculture shall direct.

With reference to the restrictions which shall be thrown around an exchange which may be designated by the Secretary of Agriculture as a contract market, section 5 provides that, (a) the exchange shall be located at a terminal market where grain is sold in sufficient volume and under such conditions as fairly to reflect the general value of the grain and the differences in value between the grades thereof, and where there is available inspection service approved by the Secretary of Agriculture for the purpose; (b) that provision shall be made for reports to the Secretary of Agriculture showing details of all transactions, and also for the keeping of records by the board showing such details, such records to be in permanent form; (c) that the board shall provide for the prevention of dissemination of false or misleading or knowingly inaccurate reports concerning crop or market information or conditions that affect or tend to affect the price of grain in interstate commerce; (d) that the governing board shall provide "for the prevention of manipulation of prices or the cornering of any grain by the dealers or operators upon such board"; (e) that the governing board shall not exclude from membership any duly authorized representative of any lawfully formed and conducted cooperative association of producers having adequate financial responsibility which is engaged in cash grain business, if such association has complied, and agrees to comply, with such terms and conditions as may be lawfully imposed upon other members; and (f) that the board provide for making effective the final

orders or decisions entered pursuant to section 6 of the act, which relates to orders made pursuant to complaints, etc.

In short, this act provides that there shall be no trading in grain or its products on an exchange except where the seller has an interest in grain in the manner designated, or unless the trade be made upon an exchange which has been designated as a "contract market"; and no exchange can be so designated except upon the conditions set out in the act, among which is the provision that the board of trade shall provide "*for the prevention of manipulation of prices or the cornering of any grain by the dealers or operators upon such board.*"

The declaration by Congress that trading on exchanges is susceptible to speculation, manipulation, and control resulting in sudden or unreasonable fluctuations in prices, which are detrimental to the producers and the consumers and the persons handling grain and its products in interstate commerce, and that such fluctuations constitute an obstruction to and a burden upon interstate commerce in grain and its products; and its requirement that the manipulation of prices shall be prevented before business can be lawfully transacted on a grain exchange, is entitled to the greatest consideration. This declaration was made by Congress after the most thorough investigation. It is alleged in the answer in this case "That the trading in futures in the room of the Exchange and the operations of said Exchange are substantially similar to those of exchanges dealing in

other commodities, such as the Board of Trade of the City of Chicago, dealing in grain; the New York Cotton Exchange, dealing in cotton; the New York Produce Exchange, dealing in grain and other produce, and that all of said exchanges, as well as this defendant, perform a great and important economic function in connection with the distribution of the products in which they deal." (R., pp. 42, 43.) If the organization of this Exchange is the same as that of the Board of Trade of the City of Chicago and it performs the same functions, then trading upon this Exchange is subject to the same manipulation and control resulting in the same fluctuations in prices; and if such conditions were an evil when resulting from the operations of a grain exchange and were a burden upon interstate commerce, they are likewise an evil and a burden upon interstate commerce when resulting from the operation of the defendant Exchange.

The view of Congress as to the evils arising from unrestrained operations upon an exchange is further manifested by the provisions of the act of August 18, 1914, entitled "An Act to tax the privilege of dealing on exchanges, boards of trade, and similar places in contracts of sale of cotton for future delivery, and for other purposes." (38 Stat. ch. 255, pp. 693-698.) Under the authority of *Hill v. Wallace*, 259 U. S. 44, this act is probably unconstitutional, inasmuch as it purports to be a taxing act and not an act to regulate interstate commerce, but nevertheless it indicates how Congress regards some practices

who is privy to such contract and brings them together for the purpose of entering into the agreement can not recover for services rendered, or losses incurred in forwarding the transaction. The language of the court has heretofore been quoted at length.

This case, of course, is not relied upon by defendants, but is the foundation for the principles enunciated in some of the cases cited by them.

Bibb v. Allen, 149 U. S. 481, was an action brought by a firm of brokers to recover commissions for services rendered and money paid in advance by them at the request of the defendants in selling as their agents cotton for future delivery, according to the rules and regulations of the New York Cotton Exchange. The court held that the employment of a broker to sell property for future delivery implies, not only an undertaking to indemnify him in respect to the execution of his agency, but also a promise by the principal to repay or reimburse him for such losses or expenditures as may become necessary or result from the performance of the agency. The authority of *Irwin v. Williar* was fully recognized, but the court said:

But the facts of this case do not bring the transactions in question within the operation of that principle, for the evidence set out in the bill of exceptions fails to show that either party to the transactions intended the same as wagering or gambling speculations. On the contrary, the undisputed testimony establishes that the sales were not wagers, but that the

cotton was to be actually delivered at the time agreed upon (page 491).

Clews v. Jamieson, 182 U. S. 461, is especially relied upon by defendants. That was an action to recover damages alleged to have been sustained by the plaintiffs from violation of a contract to purchase and pay for certain stock sold by plaintiffs on the Chicago Stock Exchange.

The court quoted at length from *Irwin v. Williar* and other authorities declaring the same principle, but found that there was nothing in the contract which showed that it was a gaming contract and in violation of the statute of Illinois; and that there was no evidence that it was entered into pursuant to any understanding whatever that it should be fulfilled by payment of the difference between the contract and the market price at the time set for delivery.

In *Bond v. Hume*, 243 U. S. 15, the question was whether a contract made between a citizen of the State of New York and a citizen of the State of Texas executed in the State of New York for the sale of cotton for future delivery upon the New York Cotton Exchange, and which was a valid contract in the State of New York, could be enforced in a Federal court in Texas in view of the provisions of the bucket-shop law of that State, the action being brought to recover for breach of such contract. The court found that the New York contract "declared on was not only valid under the law of New York, but was not repugnant to the common or general law, as long

That was an action by the Board of Trade of the City of Chicago to enjoin the Christie Grain and Stock Company from using information which was collected by the board for its own private purposes. The defenses were, (1) that the plaintiff had no such property in the information as to warrant its protection by a writ of injunction; (2) that the Board of Trade was operated in violation of the bucket-shop statute of the State of Illinois, and therefore did not come into court with clean hands; and (3) that the transmission of the information was interstate commerce, and a refusal to prevent its use generally was violative of the Anti-Trust Act. There was of course nothing in this last contention, and it was only incidentally mentioned. A number of cases brought by the Board of Trade of precisely the same nature had been previously determined by the lower courts. In 1902 in the case of *Board of Trade v. O'Dell Commission Company*, 115 Fed. 574, Judge Thompson, of the Southern District of Ohio, held that the evidence showed that the greater part of the transactions on the Board of Trade were in futures, in which, while in form contracts for the sale and delivery of commodities in the future, it was not contemplated by either party that the commodities would be actually delivered or paid for, but that the deal would be closed by the payment of differences in some form of settlement, and that such transactions were in violation of the laws of Illinois and illegal under the statute of Ohio; and he therefore denied an application for preliminary injunction.

In *Board of Trade v. Donovan Commission Company*, 121 Fed. 1012, decided in 1903, Judge Adams, of the Eastern District of Missouri, held that where it was proved that over ninety per cent of the transactions executed in the pits of a board of trade were mere gambling transactions which both parties intended to settle by a payment of differences in the subsequent prices of the commodities dealt in before the maturity of the options, quotations so obtained were of no legitimate value as tending to promote the commerce of the country, and dissemination thereof could not be restrained by such a board of trade. This decision appears to have been placed on general principles rather than upon a supposed violation of the Illinois statute.

In *Board of Trade v. Kinsey Company*, 130 Fed. 507, the Court of Appeals of the Seventh Circuit held that the fact that contracts for the sale and purchase of commodities for future delivery made on the exchange, lawful in form, are settled daily by the payment of differences or by canceling out and substituting other contracts by what are known as the direct or ring methods of settlement, does not render such contracts illegal as gambling transactions, for, being lawful in form, they are lawful in fact unless it was the intention and understanding of both parties that there should be no delivery, and lawful contracts may be lawfully canceled and settled in advance of the time for performance; that even if a large portion of them were illegal, such fact did not deprive the board of trade of its property right

in the price quotations based on its sales, which are the same for the lawful as for the unlawful transactions; and that the fact that a board of trade permits gambling on an exchange in violation of law does not affect its right to go into a court of equity for the protection of its property right in the market quotations based on the transactions of its exchange, which, as news, are entirely independent of the exchange transactions; and that court therefore granted the injunction prayed for, reversing a contrary judgment by the District Court of Indiana.

The *Christie case*, which was finally determined by this court, originated in the Western District of Missouri, and was decided by Judge Hook, who sustained the complaint and granted a decree for injunction. This decree was based upon the fact that the rules of the board of trade prohibited gambling transactions, and that consequently all sales thereon were presumptively valid, and the burden of proof rested upon one asserting to the contrary; and the fact that gambling transactions may be carried on on the exchange does not establish the claim that the organization was a bucket-shop concern doing business in violation of the law (116 Fed. 944). On appeal, the decree of the court was reversed by the Court of Appeals for the Eighth Circuit, consisting of Circuit Judges Sanborn, Van Devanter, now Mr. Justice Van Devanter, and District Judge Shiras, the court holding unanimously that the board of trade was not entitled to invoke the aid of the court to protect its property in the quotations made on the

transactions of its exchange under proof which showed that at least eighty-five per cent of such transactions were deals in which it was not intended to make a future delivery of the article nominally dealt in, but which were to be settled by the payment of money only according to the fluctuations of the market; and that the permitting of such transactions and the sending out of such quotations were violative of the statutes of the State of Illinois as construed by the supreme court of that State (125 Fed. 161). Because of the conflict in decisions a writ of certiorari was granted by this court, and the decree of the Court of Appeals was reversed, for the reasons fully set forth in the opinion (198 U. S. 236). The court held (1) that under the facts shown in the record it could not be assumed that transactions on the Board of Trade were violative of the Illinois statute, and (2) that even if there were illegal transactions on the exchange the Board of Trade had a property right in the information which should be protected by the court. From this decision Justices Harlan, Brewer, and Day dissented. The correctness of the principles announced by the court in previous cases to the effect that contracts for mere margins are unlawful was recognized, but the court said:

Purchases made with the understanding that the contract will be settled by paying the difference between the contract and the market price at a certain time, *Embrey v. Jemison*, 131 U. S. 336, *Weare Commission Co. v. People*, 209 Illinois, 528, stand on differ-

ent ground from purchases made merely with the expectation that they will be satisfied by set-off. If the latter might fall within the statute of Illinois, we would not be the first to decide that they did when the object was self-protection in business and not merely a speculation entered into for its own sake. It seems to us an extraordinary and unlikely proposition that the dealings which give its character to the great market for future sales in this country are to be regarded as mere wagers or as "pretended" buying or selling, without any intention of receiving and paying for the property bought or of delivering the property sold, within the meaning of the Illinois act. Such a view seems to us hardly consistent with the admitted fact that the quotations of prices from the market are of the utmost importance to the business world, and not least to the farmers; so important indeed, that it is argued here and has been held in Illinois that the quotations are clothed with a public use (page 249).

The court here first draws a distinction between a contract to settle by paying differences *at a specified time* and a contract where *it is merely expected that it will be satisfied by a set-off*, there being no definite understanding to that effect. But in this case it is shown that all the contracts are made for the purpose of hedging or by speculators, and that all are intended to be settled by rings or matching. The evidence shows that the quotations of prices of sugar on the Sugar Exchange are just as important

as it is there stated the quotations were upon the Board of Trade, and it is because of this importance—because they fix absolutely the prices for the world markets—that *they should be free from all improper influences.*

The court speaks favorably of transactions in futures in the following language:

As has appeared, the plaintiff's chamber of commerce is, in the first place, a great market, where, through its eighteen hundred members, is transacted a large part of the grain and provision business of the world. Of course, in a modern market contracts are not confined to sales for immediate delivery. People will endeavor to forecast the future and to make agreements according to their prophecy. Speculation of this kind by competent men is the self-adjustment of society to the probable. Its value is well known as a means of avoiding or mitigating catastrophes, equalizing prices, and providing for periods of want. It is true that the success of the strong induces imitation by the weak, and that incompetent persons bring themselves to ruin by undertaking to speculate in their turn. But legislatures and courts generally have recognized that the natural evolutions of a complex society are to be touched only with a very cautious hand, and that such coarse attempts at a remedy for the waste incident to every social function as a simple prohibition and laws to stop its being are harmful and vain (page 247).

We presume it is meant by "Speculation of this kind by competent men is the self-adjustment of

society to the probable" that it is legitimate and beneficial to the public interest that men of means and ability, who will prophesy as to the future from a careful study of existing conditions, enter the business of buying and selling commodities for future delivery, for immediately thereafter recognition is expressed of the fact that there is danger of another class, who are mere imitators and who are possessed of the spirit of gambling, engaged in operations upon the exchange, from which evil effects may result.

The statement by the court that legislatures, as well as courts, have been cautious in attempting to remedy such evils is now hardly in accord with the facts, as Congress and state legislatures have time and again enacted legislation for the purpose of protecting the public against the improper operation of exchanges.

Authorities Relled Upon by the Government.

But few authorities will be cited, because it is believed that the principles declared in but few cases are conclusive of the Government's right to the injunction sought in this case. The following propositions cover the Government's contention:

- (1) The provisions of the Act of July 2, 1890, known as the Anti-Trust Act, prohibit every kind of combination, and every activity resulting from a combination, which directly or necessarily restrains interstate commerce. *United States v. Standard Oil Company*, 221 U. S. 1, 59-62; and many other cases.

(2) It is not necessary that those combining agree, or that the immediate object of the combination is, to directly affect the transportation or price of a commodity moving in interstate commerce. *It is sufficient if the necessary result of the operation of the scheme or plan adopted is to affect the price or the traffic in such commodity.*

This proposition is conclusively settled by this court in the cases of *American Column & Lumber Company v. United States*, 257 U. S. 377, known as the *Hardwood* case, and *United States v. American Linseed Oil Company*, decided June 4, 1923, known as the *Linseed Oil* case. Each of these cases was an attack upon a plan or system agreed upon by those engaged in the same line of business, there being no direct understanding as to the control of the prices of the commodity, but the prices being necessarily affected by the operation of the plan.

(3) A combination or agreement to so manipulate an exchange as to cause an unnatural fluctuation of the prices of a commodity moving in interstate commerce is violative of the Anti-Trust Act.

This proposition is conclusively settled in *United States v. Patten*, 226 U. S. 525. In that case Patten and others were indicted for running a corner on a cotton exchange. The court below had quashed the indictment, but in construing the indictment the court had held in effect that it alleged a conspiracy to run a corner. This court reversed the judgment of the court below, holding that the allegations of the indictment stated a criminal offense. With reference

to the absence of an allegation in the indictment of an intent to obstruct interstate commerce the court said:

Although ruling that there was no allegation of a specific intent to obstruct interstate trade or commerce and that the raising of prices in markets other than the Cotton Exchange in New York was "in itself no part of the scheme" the court assumed that the conspirators intended "the necessary and unavoidable consequences of their acts," and observed that "prices of cotton are so correlated that it may be said that the direct result of the acts of the conspirators was to be the raising of the price of cotton throughout the country" (page 529).

And with reference to the effect of the running of a corner the court said:

It well may be that running a corner tends for a time to stimulate competition; but this does not prevent it from being a forbidden restraint, for it also operates to thwart the usual operation of the laws of supply and demand, to withdraw the commodity from the normal current of trade, to enhance the price artificially, to hamper users and consumers in satisfying their needs, and to produce practically the same evils as does the suppression of competition (page 542).

And the court further said:

Bearing in mind that such was the nature, object, and scope of the conspiracy, we regard it as altogether plain that by its necessary

operation it would directly and materially impede and burden the due course of trade and commerce among the States and therefore inflict upon the public the injuries which the Anti-Trust Act is designed to prevent. See *Swift & Co. v. United States*, 196 U. S. 375, 396-400; *Loewe v. Lawlor*, 208 U. S. 274; *Standard Oil Co. v. United States*, 221 U. S. 1; *United States v. American Tobacco Co.*, 221 U. S. 106. And that there is no allegation of a specific intent to restrain such trade or commerce does not make against this conclusion, for, as is shown by prior decisions of this court, the conspirators must be held to have intended the necessary and direct consequences of their acts and can not be heard to say the contrary. In other words, by purposely engaging in a conspiracy which necessarily and directly produces the result which the statute is designed to prevent, they are, in legal contemplation, chargeable with intending that result. *Addyston Pipe & Steel Co. v. United States*, 175 U. S. 211, 243; *United States v. Reading Co.*, 226 U. S. 324, 370 (page 543).

The gist of the offense charged against Patten was a combination to restrain interstate commerce, and it could make no difference whether the restraint resulted from the running of a corner, or from any other manipulation of the Exchange which would produce an unnatural fluctuation in the price. Generally a greater agitation would result from a corner, but that is a matter only of degree and can not affect the principle.

(4) If gambling in margins upon the Exchange and the course of dealing thereon from time to time results in an unnatural fluctuation in the price of the commodity traded in on the Exchange, it constitutes a restraint upon interstate commerce, and is violative of the Anti-Trust Act.

This proposition, we submit, is conclusively settled by *Board of Trade of Chicago v. Olson*, decided April 16, 1923. That case involved the constitutionality of the Act of September 21, 1922, which was enacted to "prevent and remove obstructions and burdens upon interstate commerce in grain by regulating transactions on grain future exchanges." We have heretofore called attention to the fact that Congress found as facts that transactions on such an exchange were susceptible to speculation, manipulation, and control, and that sudden or unreasonable fluctuations in the prices therefrom frequently occur as a result of such speculation, manipulation, or control, which are detrimental to the producer or the consumer and the persons handling the grain and products and by-products thereof in interstate commerce. This court was not bound by this finding of fact by Congress. It has been repeatedly held that in upholding the constitutionality of an act the court must find for itself such a state of facts as will give Congress jurisdiction to pass the act; and that Congress has not the constitutional power to pass any act upon a false assumption of fact. Therefore the court in that case after reviewing fully the facts which Congress had before it, said:

It is clear from the citations, in the statement of the case, of evidence before committees of investigation as to manipulations of the futures market and their effect that we would be unwarranted in rejecting the finding of Congress as unreasonable, and that in our inquiry as to the validity of this legislation we must accept the view that such manipulation does work to the detriment of producers, consumers, shippers, and legitimate dealers in interstate commerce in grain and that it is a real abuse.

But it is contended that it is too remote in its effect on interstate commerce, and that it is not like the direct additions to the cost to the producer of marketing cattle by exorbitant charges and discrimination of commission men and dealers, as in *Stafford v. Wallace*. It is said there is no relation between prices on the futures market and in the cash sales. This is hardly consistent with the affidavits the plaintiffs present from the leading economists already referred to, who say that dealing in futures stabilizes cash prices. It is true that the curves of prices in the futures and in the cash sales are not parallel and that sometimes one is higher and sometimes the other. This is to be expected because futures prices are dependent normally on judgment of the parties as to the future, and the cash prices depend on present conditions, but it is very reasonable to suppose that the one influences the other as the time of actual delivery of the futures approaches, when the prospect of heavy actual transactions

at a certain fixed price must have a direct effect upon the cash prices in unfettered sales. The effect of such a "deal" as that of May, 1922, as explained by Mr. J. H. Barnes, shows this clearly and illustrates in a striking way the direct effect of such manipulation in disturbing the actual normal flow of grain in interstate commerce most injuriously. Mr. Barnes also points out the effect of the operation of the rule limiting deliveries to warehouse receipts from warehouses selected by the directors of the Board whose unregulated power to suspend or modify the rule pending settlement adds to the speculative character of the market and frightens consignors.

More than this prices of grain futures are those upon which an owner and intending seller of cash grain is influenced to sell or not to sell as they offer a good opportunity to him to hedge comfortably against future fluctuations. *Manipulations of grain futures for speculative profit, though not carried to the extent of a corner or complete monopoly, exert a vicious influence and produce abnormal and disturbing temporary fluctuations of prices that are not responsive to actual supply and demand and discourage not only this justifiable hedging but disturb the normal flow of actual consignments. A futures market lends itself to such manipulation much more readily than a cash market.*

In the case of *United States v. Patten*, 226 U. S. 525, an indictment charged a conspiracy to run a corner by making purchases of quantities of cotton for future delivery, by means of

which the conspirators were to secure control of the available supply of cotton in the country and enhance the price of cotton at will. It was contended that even if the necessary result of this was an obstruction of interstate trade, it was so indirect as not to constitute a restraint of it within the Federal Anti-Trust Law under which the indictment was drawn. This Court held otherwise and sustained the indictment.

Corners in grain through trading in futures have not been so frequent as they were before 1900, due, as the plaintiffs aver, to the stricter rules of the Board of Trade as to futures and to the Sherman Antitrust Act, though they do seem to have since occurred infrequently. The fact that a corner in grain is brought about by trading in futures shows the direct relation between cash prices and actual commerce on the one hand, and dealing in futures on the other, because a corner is not a monopoly of contracts only, it is a monopoly of the actual supply of grain in commerce. It was this direct relation that led to the decision in the *Patten* case. *If a corner and the enhancement of prices produced by buying futures directly burden interstate commerce in the article whose price is enhanced, it would seem to follow that manipulations of futures which unduly depress prices of grain in interstate commerce and directly influence consignment in that commerce are equally direct.* The question of price dominates trade between the States. Sales of an article which affect the country-wide price of the article directly affect the country-

wide commerce in it. By reason and authority, therefore, in determining the validity of this act, we are prevented from questioning the conclusion of Congress *that manipulation of the market for futures on the Chicago Board of Trade may, and from time to time does, directly burden and obstruct commerce between the States in grain, and that it recurs and is a constantly possible danger.* For this reason, Congress has the power to provide the appropriate means adopted in this act by which this abuse may be restrained and avoided.

Here was a positive finding by this court that the manipulations of grain futures for speculative profit, though not carried to the extent of a corner, exert a vicious influence and produce abnormal and disturbing temporary fluctuations of prices that are not responsive to actual supply and demand, and not only discourage justifiable hedging, but disturb the normal flow of actual consignments. It is alleged in the answer that the Sugar Exchange is organized and operated on exactly the same plan as the Chicago Board of Trade; and, as fully shown in the evidence heretofore cited, the dealings thereon are almost exclusively in margins, and great disturbances in prices have actually resulted from the manipulation on the Exchange. Therefore the finding of facts in that case, so clearly and forcefully expressed, are equally applicable in this case.

The fact that the court there had under consideration an act which was passed for the specific purpose

of regulating grain exchanges is no argument that the principle there enunciated is not equally applicable to this case. As above stated, the provisions of the Anti-Trust Act, as said by Mr. Chief Justice White in the *Standard Oil* case, are all-inclusive. They apply to every restraint upon interstate commerce, whether that restraint arises from an agreement between two individuals to do a specific thing, or whether it results from a combination having the form of an exchange. The questions are, Has a plan of operation been adopted; and if so, does the operation of such plan necessarily restrain interstate commerce? If so, it falls within the prohibitions of the Anti-Trust Act.

It may be that since the passage of the act cited, the validity of which was sustained by the court in that case, the provisions of the Anti-Trust Act do not apply to grain exchanges, as Congress has seen fit to pass an act specifically providing for their regulation. But that statute can not have the effect of limiting the scope of the Anti-Trust Act as to any part of interstate commerce not covered by its provisions.

(5) Much is said about the beneficial effects of the Exchange, but this argument is entitled to no consideration, for two reasons. First, the Government is not seeking to enjoin those transactions which are denominated by Professor Seligman as regular speculation—those which have a proper place in commercial life; and, second, as said in *Addyston Pipe*

Line Company v. United States, 175 U. S. 211, 241-242, "The argument that the course pursued is necessary to the protection of the retail trade and promotive of the public welfare in providing retail facilities is answered by the fact that Congress, with the right to control the field of interstate commerce, has so legislated as to prevent resort to practices which unduly restrain competition or unduly obstruct the free flow of such commerce, and private choice of means must yield to the national authority thus exerted."

SCOPE OF DECREE THAT SHOULD BE ENTERED AGAINST DEFENDANTS.

As has heretofore been indicated, the Government does not ask a decree that shall prohibit the operation of every kind of a sugar exchange, although there is certainly little need for such an organization. It insists that a decree should be entered taking one or the other of the following forms:

(1) Declare that the organization and operation of the defendants New York Coffee and Sugar Exchange (Inc.) and New York Coffee and Sugar Clearing Association (Inc.) in so far as they relate to transactions in sugar constitute a combination in violation of the Anti-Trust Act, and remand the case, directing that a decree be entered enjoining all transactions in sugar on the Exchange. This would be an adjudication only against the Exchange as now regulated and operated. And if another exchange shall be organized the burden will be upon its promoters to

see that its organization is lawful, and that it is operated in compliance with law. This in effect was the form of the decrees in the *Hardwood* and *Linseed Oil* cases.

(2) Declare that certain rules and practices of the Exchange and of the Clearing Association are violative of the Anti-trust Act, and remand to the court below, directing that a decree be entered requiring such a modification of the rules and regulations as will bring the organization within the provisions of the law, and enjoining a continuation of the improper practices, it being specifically declared by this court that all rules are unlawful which tax or in any way interfere with the delivery of sugar through the Exchange, and that it is unlawful to permit transactions on the Exchange except by an owner or grower of sugar, or one owning or renting the land upon which it is produced, or a representative of such owner or grower of sugar or owner or renter of land, and except transactions in which actual deliveries of sugar are contemplated, or which are substitutes on the Exchange for *bona fide* transactions had or contemplated outside of the Exchange made, or to be made, for the purpose of securing a sale or purchase of sugar at the price prevailing at the time of sale, or at the time of delivery. This would permit all so-called legitimate hedging upon the Exchange. Such a decree would be of the nature of those rendered in cases involving a readjustment of

the ownership of property; but apparently such a form has not been used except when property was involved.

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OCTOBER, 1923.



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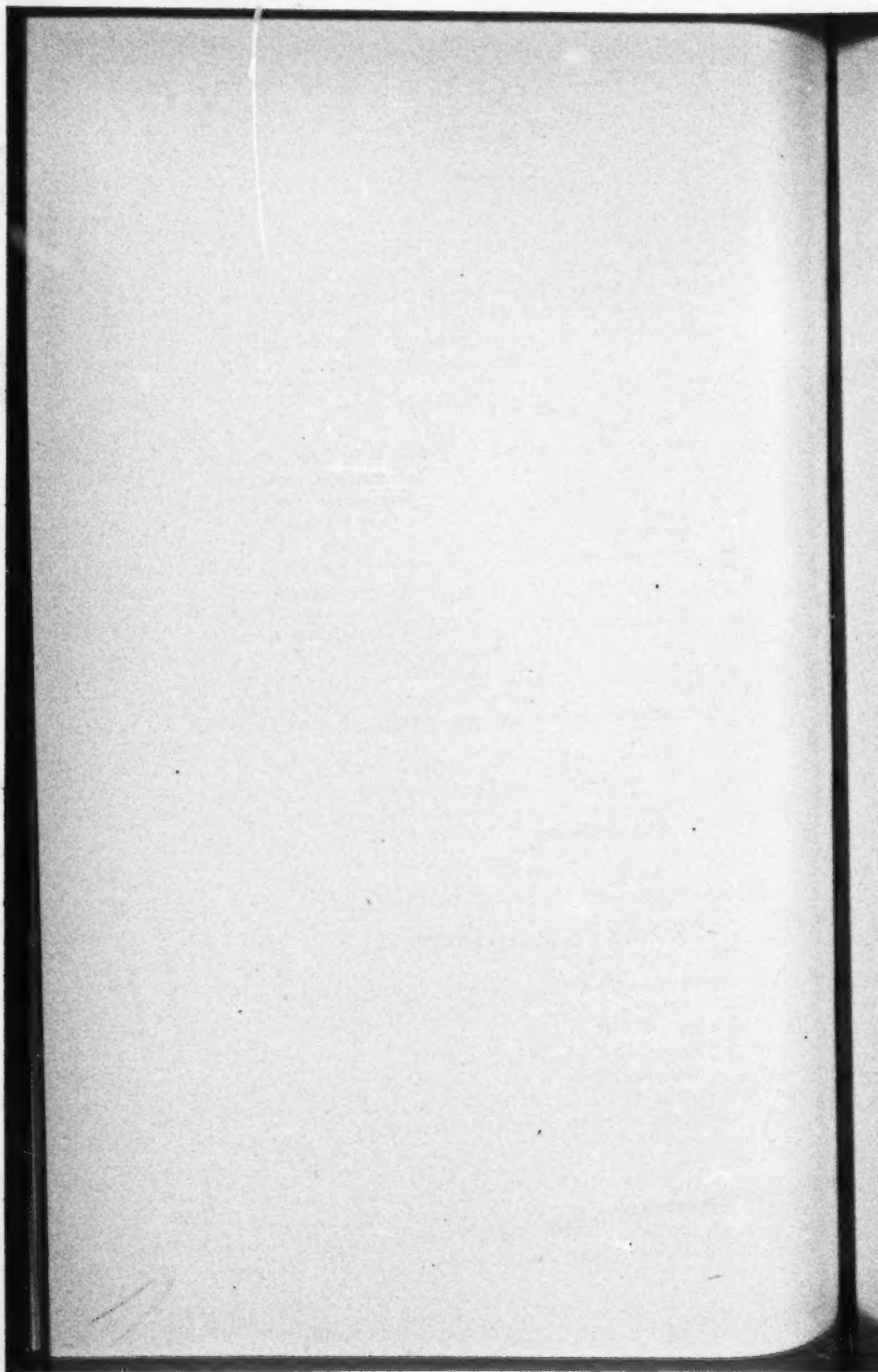
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IN THE
Supreme Court of the United States.

OCTOBER TERM, 1923.

UNITED STATES OF AMERICA, Appellant, <i>against</i> NEW YORK COFFEE & SUGAR EX- CHANGE, INC., NEW YORK COF- FEE & SUGAR CLEARING ASSOCIA- TION, INC., and others, Appellees.	} No. 331.
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**Appeal from the District Court of the
United States for the Southern District
of New York.**

BRIEF FOR APPELLEES.

(All italics not otherwise indicated are ours.)

Preliminary Statement.

This bill was filed on April 19th, 1923, accompanied by a motion for a preliminary injunction returnable on April 30th. The Attorney General having filed a certificate of expedition, the motion for injunction was argued before the four Circuit Judges of the Second Circuit by the complainant on April 30th and by the defendants on May 7th, and on May 9th the unanimous decision of the Court was rendered, denying the motion for injunction without opinion. A stipulation was

made between the parties that the cause proceed to final hearing upon the merits on the pleadings and affidavits filed upon the application for preliminary injunction, and the Court thereupon on May 15th, 1923, entered its final decree dismissing the petition (R., page 172). No opinion was handed down. The appeal to this Court was entered on May 19th, 1923—one month after the filing of the Bill.

The charge in the Bill is in effect (1) that between February 1st, 1923, and the date of the filing of the Bill, April 19th, 1923, there existed "no economic justification for a sudden or appreciable increase in the price of raw or refined sugar, or for any increase" (R., p. 19), but that nevertheless there was a "rapid increase in the price of raw and refined sugar beginning on February 7, 1923, and in effect on the date of the filing of this bill," and (2) that such rapid increase in price was "the direct result of a combination and conspiracy" between the defendants and their members who "by means of purported purchases and sales of sugar have sought to establish and have established arbitrary and unwarranted prices not governed by the law of supply and demand but based wholly on speculative dealings not involving the delivery of the quantities of sugar represented thereby, but altogether carried on for the purpose and with the effect of unduly enhancing the price of sugar to the enrichment of said defendants and their principals, and to the detriment of the public" (R., p. 21). This is the whole charge.

The only conspiracy or combination or contract to restrain trade, alleged or attempted to be proved by the Government, is to be found in the charter, by-laws, rules and regulations of the Exchange and Clearing Association, and the sales

for future delivery made on the floor of the Exchange by its members in accordance with such rules and in the execution of orders received from twenty (20) or more different countries of the world (R., p. 68).

The defendant Exchange is admittedly organized on substantially similar lines as the Chicago Board of Trade, and bears the same relation to sugar that the Chicago Board of Trade does to grain, with the exception that practically no spot sales or sales for immediate delivery are made on the floor of the Sugar Exchange,—differing in this respect from the Chicago Board of Trade (R., p. 68).

The purposes and usefulness of the New York Coffee and Sugar Exchange, Inc., are set forth in the affidavit of Mr. Diercks, the President of the Exchange, and in the other affidavits submitted on behalf of the defendants (R., p. 67 *et seq.*). Testimony as to the economic usefulness of the Exchange was given by officers of eight (8) great New York banks (R., pp. 89-92, 115). Large producers of cane sugar in Louisiana (Godchaux, R., p. 93) and in Cuba (Cuba Cane Sugar Corporation, R., p. 116), and of beet sugar in California, Colorado and Nebraska (American Beet Sugar Company, R., p. 93) gave similar testimony, as did some five (5) of the ten American refiners (Godchaux, McCahan, Warner, Savannah, and Imperial, R., pp. 93-94, 117-118).

Briefly, the Exchange, by affording a market for future transactions, under regulations which prevent fraud and unfair dealing, fulfils a great economic function, facilitating the marketing of the sugar crop, keeping the producing and consuming public advised of the trend of world opinion with respect to prices, and thereby preventing the control of prices by a few great refineries,

which with their vast capital might otherwise be able to largely dominate prices, as they notoriously have done in the past.

For a fuller statement of the economic advantages of a future exchange, we refer to Judge Holmes' opinion in the *Christie* case, 198 U. S., 236, hereinafter quoted.

It is of course true that to some extent persons, who have no actual sugar transactions to protect, buy and sell futures on the Exchange; but these transactions are relatively few. While it is not possible for the Exchange to determine the proportionate amount, since it cannot know all the customers of its various members or their reasons for trading on the Exchange, the Government, in the affidavit of Mr. Lewis filed by it (R., pp. 164-168), has undertaken to analyze, from the reports voluntarily furnished it by members of the Exchange, that out of sixty-five per cent. of all transactions on the Exchange in February, dealing with lots of fifty tons each, the following was the distribution of such lots:

Lots		Lots	
Bought		Sold	
2,870	Sugar Planters	4,204	
175	" Dealers	164	
5,747	" Brokers	5,350	
1,558	Stock Exchange Brokers & Customers	1,315	
3,569	Individual	3,173	
5,497	Unknown (a/c reported by number only)	5,381	
1,160	Foreign (Eng., France, Ger., Cuba, Can., Spain)	1,446	
<hr/> 20,576		<hr/> 21,033	

It may fairly be assumed that the gambling element is to be found in the items of "Stock Exchange Brokers and Customers" and "Individual", which is a relatively small portion of the transactions—eliminating those classified as "Unknown", which cannot, of course, be regarded either way. But of those classified under "Stock

Exchange Brokers & Customers" and under "Individual" many are, no doubt, genuine transactions connected with actual sugar contracts—the contracting parties having availed themselves of the private long distance wires of Stock Exchange houses, or their credit account with them, or otherwise.

The Government devotes some twenty-five pages of its brief to an effort to prove that the by-laws and rules of the Exchange are designed to prevent deliveries of sugar through the Exchange, and that the Exchange "was established solely for the purpose of trading or speculating in futures, with no expectation or intention that the contracts entered into on the Exchange should be consummated by a bona fide compliance with their terms." (Government's brief, pp. 24-50). It is sufficient to say that the exact contrary is the fact. Every future contract on the Exchange contemplates and provides for actual delivery, and actual delivery occurs unless the contract is off-set against another contract (R., p. 78, fol. 93). This Court has held that "set-off has all the effects of delivery." (Christie case, 198 U. S., 236, 246).

It is true that deliveries through the Exchange are or may be slightly more expensive than deliveries on the so-called cost and freight method, because deliveries through the Exchange involve the transfer of warehouse receipts, and the charges of the warehouse enhance the cost, while deliveries on the cost and freight method are frequently made without the intervention of a warehouse.

The provisions of the by-laws and rules governing deliveries are designed to ensure proper grading, classification and uniformity, and not to hamper or prevent deliveries, for doing which the

Exchange could have, and has, no motive. It, of course, makes no difference to the Exchange whether contracts are complied with by delivery or by set-off. The Exchange merely provides for fair dealing and uniformity in either case.

POINT I.

The bill set out no case for relief under the statutes invoked.

The suit is predicated wholly upon the Sherman Act and Section 73 of the Wilson Tariff Act. The averments necessary for relief under either statute seem entirely lacking.

1. Section 73 of the Wilson Tariff Act in express terms applies only to those who are "engaged in importing any article from any foreign country into the United States." There is no averment that either of the corporate defendants or any of the individual defendants are engaged in importation.

2. It is elementary that in order to bring any course of conduct within the scope of the Sherman Act there must be (a) some concert or agreement among the parties attacked, and (b) some actual restraint of trade. The Bill wholly fails to aver either concert or restraint.

(a) While the words "combination" and "conspiracy" are freely sprinkled through the Bill, the only averment of substantive fact seems to be that since February 7, 1923,

"an orgy of speculation in raw sugar has been indulged in through the instrumen-

talities of the Exchange and Clearing Association" (R., p. 22)

and that

"these speculative operations carried on for the purpose and with the intent of unduly enhancing the price of both raw and refined sugar, and which have accomplished that object and constitute and are an unlawful combination and conspiracy in restraint of interstate and foreign trade and commerce," etc. (R., p. 24).

There is also a recital (R., p. 21) that

"This rapid increase in the price of raw and refined sugar, beginning on February 7, 1923, and in effect on the date of the filing of this bill, was and is the direct result of a combination and conspiracy between the New York Coffee and Sugar Exchange (Inc.), the New York Coffee and Sugar Clearing Association (Inc.), and the officers and members of those corporations and their clients or principals who by means of purported purchases and sales of sugar have sought to establish and have established artificial and unwarranted prices not governed by the law of supply and demand, but based wholly on speculative dealings not involving the delivery of the quantities of sugar represented thereby, but altogether carried on for the purpose and with the effect of unduly enhancing the price of sugar to the enrichment of said defendants and their principals and to the detriment of the public."

Giving these averments all the weight which can be claimed for them, how is it possible to tell from them what agreement, if any, there was between the corporate or the individual defendants, and what is the unlawful concert which the Court is asked to dissolve?

It is not easy to see what causal connection there may be between the incorporation of the Sugar Exchange and the Clearing Association in 1885 and 1917, respectively, and the alleged conspiracy beginning on February 7, 1923.

(b) The Bill speaks of "fictitious or paper sales" (p. 22), of the establishment of "artificial and unwarranted prices not governed by the law of supply and demand" (p. 21); "abnormal and unwarranted increases in prices of raw and refined sugar" (p. 22), and of "speculative operations carried on for the purpose and with the intent of unduly enhancing the prices of both raw and refined sugar and which have accomplished that object" (p. 24). But one looks in vain for an averment that trade in sugar has been in any way restrained. There is no charge of an effort to corner the market; to control the supply; to prevent or suspend competition among either buyers or sellers; to interfere with the importation, exportation or transportation of sugar, or to fix by arbitrary agreement the price to be paid for it. So far as the Bill shows, there is no self-imposed restraint on the part of the Exchange, the Association and their members, nor any effort on their part to impose any restraint whatever upon third persons. The naked charge is that as a result of what has taken place on the Exchange, the price of sugar has gone up; but this is simply to say that sellers have appeared who are or profess to be willing to give, and buyers who are or profess to be willing to pay more than the Government in its wisdom deems to be a fair price. The head and front of the offending on the part of the Exchange is that it has offered these foolish and misguided persons a theatre in which to display themselves.

That there has been any contract, combination or conspiracy to raise prices, the defendants deny, and the evidence supports them in this denial. The Government, however, reverses the reasoning, and, having established a rise in prices, asks the Court to infer a conspiracy. To this, the answer is obvious.

Mere enhancement of price is not in and of itself a restraint of trade. It frequently follows as a result of some restraint and is therefore to be condemned, but a restraint of trade would be equally vicious if its effect was artificially to reduce rather than raise the price of an article. So far as the Anti-Trust Statute is concerned, the law is perfectly impartial between the producer and the consumer. It is true that one desires a high and the other wishes to pay a low price, but so long as they are left free to contract, it is a matter of no consequence to the law which point of view shall prevail.

It is the constant effort of all producers to get the best price obtainable for the things they produce. They may even indulge in concerted effort to this end, as, for instance, by financing a common advertising campaign to popularize their articles and increase the public demand. What the law denounces is that they should attempt by agreement between themselves to limit the supply or restrict the output, or monopolize the market, or agree upon the prices to be charged. In a free market, all prices depend upon the relative needs of the buyer and seller and upon their opinion of the action which other men in similar circumstances would be willing to take. Giving to the averments of the Bill their most liberal interpretation, all that the defendants have done is to create the impression in

other men's minds that they can if they choose buy or sell sugar for future delivery at certain figures.

Whether the operation of such Exchanges, or the contracts made on them, do or do not have any ultimate effect on interstate commerce is also beside the mark. The Grain Futures Act (*Board of Trade vs. Olsen*, April 16, 1923) is predicated on the Congressional declaration that sudden or unreasonable fluctuations in prices on Exchanges "are an obstruction to and a burden upon interstate commerce in grain products and by-products thereof and render regulation imperative for the protection of such commerce and the protection of the national public interest therein." Many things, however, are obstructions or burdens to interstate commerce which do not constitute contracts, combinations or conspiracies in restraint of trade under the Sherman Law. Thus, excessive freight rates are a burden on commerce and as such may be regulated, but in the absence of any agreement among the railroads to make and support them, no one would imagine that excessive freight rates could be cured by an injunction under the Sherman Law, certainly not by enjoining entirely the further operation of the railroads.

The action of Congress in passing the Grain Futures Act is itself evidence both of the Congressional conviction that Exchanges which permit dealings in "futures" perform a useful function, and also that their regulation had not already been committed to the Courts by the Sherman Act, as the Government now asserts.

POINT II.

The bill was properly dismissed as lacking in equity. No facts showing a conspiracy, combination or contract to restrain trade were alleged or proved. The allegations to that effect were mere conclusions.

The Bill alleged, and the proof established:

(a) the existence of an Exchange bearing the same relation to sugar that the Chicago Board of Trade bears to grain, except that there are practically no "spot" contracts (contracts for immediate delivery) dealt in on the Sugar Exchange;

(b) an enhancement in the price of sugar, both for future delivery and for immediate delivery, during the months of February, March and April, 1923; and

(c) an unusually large number of contracts for future delivery made on the floor of the Exchange during such period.

The Bill also alleged, *but this allegation was disproved:*

(d) That there existed "no economic justification" for a rise in prices.

The Government, nevertheless, still insists that the advance in prices was due to the unusual number of future contracts made on the Exchange. Proof that this was the cause of the advance is wholly lacking. The report of the Tariff Commission assigns other reasons (R., p. 78, fol. 94). The defendants proved *sufficient economic causes* for the advance in prices. (See Point III post). *The defendants maintain that*

the unusual number of contracts on the Exchange was due to such economic causes. In other words, the Government confuses cause with effect, or puts the cart before the horse.

Assuming for the moment, although the proof points to the contrary conclusion, that the advance in prices was due to the unusual number of contracts made on the Exchange, and even that it was the wish of the defendants that prices should advance, the defendants nevertheless contend that an advance in prices, even if due to speculation in futures on the Exchange, is not a restraint of trade,—in the total absence of any charge or proof of an agreement to fix the prices, to curtail production, to limit sales, to corner the market, to control the supply, to prevent or suspend competition among other buyers or sellers, or interfere with the importation, exportation or transportation of sugar.

In brief, the Sherman Anti-Trust Law does not make mere speculation an offense. It is not an anti-gambling statute. Congress may have power to regulate the Exchange, as it has regulated the Chicago Board of Trade by passing the Grain Futures Act, but this Court is not required to do so by any provision in the Sherman or Wilson Acts invoked by the Government.

All of the acts charged to the defendants in the Bill, apart from the pleader's characterization of them, have been expressly approved by this Court in numerous cases:

Board of Trade of the City of Chicago vs. Christie Grain & Stock Co., 198 U. S., 236;
Clews vs. Jamieson, 182 U. S., 461;
Bond vs. Hume, 243 U. S., 15.

And by the Court of Appeals of the State of New York:

Springs vs. James, 137 App. Div., 110, affirmed, 202 N. Y., 603;

Hurd vs. Taylor, 181 N. Y., 231, 233.

The bill characterizes such acts as "fictitious" or "paper" transactions, but this characterization is a mere conclusion of the pleader at variance with the conclusions of this Court. The Bill, having so characterized the lawful acts of the defendants, thereupon charges that they constitute an illegal "conspiracy" or "combination."

In effect the Bill says:

These defendants have maintained an exchange for future trading where future trading has occurred in considerable volume. Prices have advanced. There is no economic cause for such advance that the pleader knows of, therefore the advance must be due to the exchange's trading.

Or, to put it more briefly:

Prices are advancing. Trading occurs on the Exchange. Ergo, the Exchange is responsible for advancing prices.

That is all that there is in the Bill in its last analysis.

There is no charge of a corner, or of "wash" selling, or of manipulation, or of any act forbidden, or not distinctly approved, by law.

It is true that in this Court the Government contends that, even though, taken separately, the contracts for future delivery of sugar made on the Exchange are, (as held by this Court in *Clews*

vs. *Jamieson*, 182 U. S., 461) valid, nevertheless, collectively they are invalid since it must be inferred from the small percentage of actual deliveries and the regulations governing deliveries, that the intention to deliver is lacking when the contracts are made. This argument ignores the fact that the same situation existed in the case of *Board of Trade of the City of Chicago vs. Christie Grain & Stock Company*, 198 U. S., 236, where the validity of such contracts was sustained by this Court, Mr. Justice Holmes saying:

"Set-off has all the effects of delivery
 * * *. The fact that contracts are satisfied in this way by set-off and the payment of differences detracts in no degree from the good- of the parties, and if the parties know when they make such contracts that they are very likely to have a chance to satisfy them in that way and intend to make use of it, that fact is perfectly consistent with a serious business purpose and an intent that the contract shall mean what it says * * *. It is none the less a serious business contract for a legitimate and useful purpose if it may be off-set before the time of delivery in case delivery should not be needed or desired."

The defendants' proof shows that the transactions on the Exchange are substantially similar to those on the Chicago Board of Trade, and on the New York Cotton Exchange, which have been judicially approved in the following cases among others.

Board of Trade of City of Chicago vs. Christie Grain & Stock Co., 198 U. S., 236, 246. This was a suit brought to enjoin the use of the plaintiff's quotations by an alleged bucket shop. The de-

fense that the plaintiff's own transactions were illegal was overruled. By HOLMES, J. (*italics ours*):

"It appears that in not less than three-quarters of the transactions in the grain pit there is no physical handing over of any grain, but that there is a settlement, either by the direct method, so-called, or by what is known as ringing up. The direct method consists simply in setting off contracts to buy wheat of a certain amount at a certain time, against contracts to sell a like amount at the same time, and paying the difference of price in cash, at the end of the business day. The ring settlement is reached by a comparison of books among the clerks of the members buying and selling in the pit, and picking out a series of transactions which begins and ends with dealings which can be set against each other by eliminating those between—as, if A has sold to B five thousand bushels of May wheat, and B has sold the same amount to C, and C to D and D to A. Substituting D for B by novation, A's sale can be set against his purchase, on simply paying the difference in price. The Circuit Court of Appeals for the Eighth Circuit took the defendant's view of these facts and ordered the bill to be dismissed. 125 Fed. Rep., 161. The Circuit Court of Appeals for the Seventh Circuit declined to follow this decision and granted an injunction as prayed. 130 Fed. Rep., 507. Thereupon writs of certiorari were granted by this Court and both cases are here.

"As has appeared, the plaintiff's chamber of commerce is, in the first place, a great market, where, through its eighteen hundred members, is transacted a large part of the grain and provision business of the world. *Of course, in a modern market contracts are not confined to sales for immediate delivery. People will endeavor*

to forecast the future and to make agreements according to their prophecy. Speculation of this kind by competent men is the self-adjustment of society to the probable. Its value is well known as a means of avoiding or mitigating catastrophes, equalizing prices and providing for periods of want. It is true that the success of the strong induces imitation by the weak, and that incompetent persons bring themselves to ruin by undertaking to speculate in their turn. But legislatures and courts generally have recognized that the natural evolutions of a complex society are to be touched only with a very cautious hand, and that such coarse attempts at a remedy for the waste incident to every social function as a simple prohibition and laws to stop its being are harmful and vain. This Court has upheld sales of stock for future delivery and the substitution of parties provided for by the rules of the Chicago Stock Exchange. *Clews vs. Jamieson*, 182 U. S., 461.

"When the Chicago Board of Trade was incorporated we cannot doubt that it was expected to afford a market for future as well as present sales, with the necessary incidents of such a market, and while the State of Illinois allows that charter to stand, we cannot believe that the pits, merely as places where future sales are made, are forbidden by the law. But again, the contracts made in the pits are contracts between the members. We must suppose that from the beginning as now, if a member had a contract with another member to buy a certain amount of wheat at a certain time and another to sell the same amount at the same time, it would be deemed unnecessary to exchange warehouse receipts. We must suppose that then as now, a settlement would be made by the payment of differences, after the analogy of a clearing house. This naturally would

take place no less that the contracts were made in good faith for actual delivery, since the result of actual delivery would be to leave the parties just where they were before. Set-off has all the effects of delivery. The ring settlement is simply a more complex case of the same kind. These settlements would be frequent, as the number of persons buying and selling was comparatively small.

"The fact that contracts are satisfied in this way by set-off and the payment of differences detracts in no degree from the good faith of the parties, and if the parties know when they make such contracts that they are very likely to have a chance to satisfy them in that way and intend to make use of it, that fact is perfectly consistent with a serious business purpose and an intent that the contract shall mean what it says. There is no doubt, from the rules of the Board of Trade or the evidence, that the contracts made between the members are intended and supposed to be binding in manner and form as they are made. There is no doubt that a large part of those contracts is made for serious business purposes. Hedging, for instance, as it is called, is a means by which collectors and exporters of grain or other products, and manufacturers who make contracts in advance for the sale of their goods, secure themselves against the fluctuations of the market by counter contracts for the purchase or sale, as the case may be, of an equal quantity of the product, or of the material of manufacture. It is none the less a serious business contract for a legitimate and useful purpose that it may be offset before the time of delivery in case delivery should not be needed or desired."

Spring vs. James, 137 App. Div., 110, affd.,

202 N. Y., 603, was a suit to recover a broker's commissions on transactions in futures on the New York Cotton Exchange. By CLARKE, J., at page 112:

"The New York Cotton Exchange was incorporated by a special act of the New York Legislature (Laws of 1871, chap. 365), amended by statutes passed in the years 1880 (Chap. 228), 1881 (Chap. 113) and 1883 (Chap. 59). The purposes of the corporation, declared in the act, were 'To provide, regulate and maintain a suitable building, room or rooms, for a cotton exchange in the City of New York; to adjust controversies between its members; to establish just and equitable principles in the trade; to maintain uniformity in its rules, regulations and usages; to adopt standards of classifications; to acquire, preserve and disseminate useful information connected with the cotton interest throughout all markets; to decrease the local risks attendant upon the business, and generally to promote the cotton trade of the city of New York, increase its amount and augment the facilities with which it may be conducted.' "

At pages 116, 117:

"That both the parties contemplated that the transactions should take place upon the Cotton Exchange and were to be controlled by its rules and customs, is not susceptible of argument. The defendant, who, upon his own testimony, has been engaged in doing business through members of the Cotton Exchange upon that exchange for from fifteen to twenty years, and who, the testimony shows, has taken his profits from time to time without objection, for the purpose of avoiding this liability, now testifies that his purpose was 'to play the market', and that he did not

intend either to deliver or receive a pound of the cotton which he ordered the plaintiffs to buy and sell upon the exchange for his account.

"If we assume that such testimony, given under such circumstances, is credible, that would not be ground for declaring the transactions illegal. *Bibb vs. Allen*, (149 U. S., 481) was an action for commissions for services rendered and money paid and advanced by plaintiffs for and at the request of the defendants in selling for their account and as their agents cotton for future delivery according to the rules and regulations of the New York Cotton Exchange. The court reasserted the proposition that it is well settled that contracts for the future delivery of merchandise or tangible property are not void, whether such property is in existence in the hands of the seller or to be subsequently acquired, and that the burden of proof is upon the party who seeks to impeach such transactions by showing affirmatively their illegality; that a transaction which on its face is legitimate cannot be held void as a wagering contract by showing that one party only so understood and meant it to be; and in sustaining a judgment for the plaintiffs alluded to the fact that in the memorandum or slip contracts the sales were described as made subject to the rules and regulations of the New York Cotton Exchange; that the parties made use in their telegraphic correspondence of Shep-person's code, and said: 'It is shown that the rules and regulations of the New York Cotton Exchange recognized no contracts except for the sale and purchase of cotton to be actually delivered. These rules and regulations impose upon the seller the obligation to deliver the cotton sold, and upon the purchaser the obligation to receive it. * * * These rules which were authorized to be made by the statute of the State

of New York, under which the Exchange was incorporated, enter into and form part of the contracts of sale in this case.' "

At page 119:

"The very purpose of an exchange is to facilitate business, and as the growth of commercial and banking business has necessitated the economy of the banking clearing house, so the stock exchange and the cotton exchange have adopted clearing house facilities. A broker upon the exchange may represent many customers, and may execute during the day with many other members many contracts both of sale and purchase. It would be as idle to insist upon an actual delivery between the members of the Exchange as it would be to compel the banks to cart to each other's banking house the actual money called for by the checks severally received by each upon the other. So that the rules of the Exchange provide for certain methods of clearing. It will be remembered that each transaction occurs across the ring and is evidenced by a so-called slip, which is in effect a bought and sold note or, in the vernacular of the Exchange, 'a contract' which provides for actual delivery. The first method of clearance is by direct settlement, that is, if A has sold to B and B has sold to A, the two contracts are offset one against the other. If there is a difference in the price, that difference is paid. *Second*, the ring settlement, which consists of three or more transactions which may be offset, and, by payment of differences, lead to the same result. By this offset there is a substitution through the chain or ring of parties. Another method is called the 'street let-out', which is simply another method of arriving at a novation or substitution."

At page 122:

"Bearing in mind, then, that the dealings between the plaintiffs and the defendant had reference to and were to be consummated upon the exchange with reference to and controlled by the by-laws, rules and regulations thereof, which governed the plaintiffs as members thereof, and that those rules and regulations contemplated and required actual performance of the contracts for future delivery, and, as between members, provided for clearances by prescribed methods which could be compelled by any member, and that these methods have been approved by the Supreme Court of the United States—holding that a settlement by way of set-off is equivalent to delivery, and that the defendant does not complain that his directions were not carried out, and that he did not receive prompt notice of the sale or purchase, as ordered by him, at the prices reported at the time made, and that he made no question of the accounts received until this suit was brought, what is it that he complains of? That because the contracts which were purchased or sold for his account were settled by way of substitution and set-off between the plaintiffs and other members of the Exchange before the time when he gave his order to close the transaction, therefore, no moneys had been laid out and expended for his benefit. But for every contract that was set off against another contract there was a payment *pro tanto*, because set-off is payment, and where the prices named in the contract differed an actual payment in money took place. So that the effect, so far as the plaintiffs were concerned, was precisely as if when he did order the transaction closed they had paid out the actual sum which represented the difference between the purchase and the selling price. No harm

came to him by reason of this transaction. The only persons that he ever knew were the plaintiffs; it was upon their faith and credit that he rested when he gave his orders. They never reported to him the names of the persons with whom they had entered into the contract which he had authorized them to make, either the opposite broker or the principals of that broker. He dealt with the plaintiffs, and the rules required that whenever the substitution and set-off occurred they should be responsible for the strict fulfillment of the contract and be liable to the defendant."

Cleage vs. Laidley et al., 149 Fed. Rep., 346, involved the validity of transactions in grain futures on the St. Louis and Chicago Exchanges.

By SANBORN, J., at page 352:

"Contracts for the future delivery of grain and other personal property are lawful and valid. The legal presumption is that the parties who make them intend to perform them, and the burden is on him who avers that the illegal intention of one or more of these parties has made them void to establish his allegation by plenary proof. *Clews vs. Jamieson*, 182 U. S., 461, 489, 21 Sup. Ct., 845, 45 L. Ed., 1183; *Pixley vs. Boynton*, 79 Ill., 351. An intention by one or both of the parties to sell such an agreement, or their rights under it, before the time of delivery, does not avoid it. Parties have the same right to buy contracts for the future delivery of personal property with the intention of selling them that they have to buy the property with such an intention. *Ponder vs. Jerome Hill Cotton Co.*, 40 C. C. A., 416, 420; 100 Fed., 373, 377. An intention to discharge a contract for the future delivery of personal

property by set-off or by ringing off under the rules and practice of the Board of Trade and by the payment of differences is not illegal, and does not render the agreement void. The contracts which form the foundation of the claims of the brokers which are here in question were made and ratified by the defendant. They were legal contracts per se. There was no evidence that either the defendant or the brokers intended to settle them without the delivery of any grain by the payment to, or receipt from the other parties to the agreements of the difference between the contract prices and the market prices at the times of performance. The intention not to receive grain unless forced to do so to protect his contracts to which the defendant testified is consonant with the lawful intention to sell like quantities of grain and to settle his obligations as far as possible by set-offs and by the use of rings, so that he would be obligated to receive but little or none of the commodities. From the lawful contracts the legal presumption arose that the parties thereto intended in good faith to perform them."

POINT III.

The Government's charge that no economic cause existed for the advance in sugar prices was disproved.

The Bill alleges (R., p. 19):

"There existed during this period no economic justification for a sudden or appreciable increase in the price of raw or refined sugar, or for any increase."

The answer of the defendants, the affidavit of Mr. Gilmour (R., p. 95), and the affidavit of Mr. Diercks (R., pp. 67, 74), show beyond any question that there were most substantial economic reasons for price increases.

These reasons are:

1. Development in trade conditions showing that the estimated excess of production over consumption was approaching the vanishing point. Emphasized by

- a. The U. S. Department of Commerce's announcement on or about February 10th, 1923, that there would be a shortage of production (R., pp. 54, 74, 137-138).
- b. The similar announcement by the British Chancellor of the Exchequer on April 18th, 1923 (R., p. 75).
- c. The reduction in the estimates of various recognized statistical authorities of the Cuban crop (R., p. 53, fols. 62, 236).
- d. A drought in Cuba (R., p. 96, fol. 147).

2. The fact that the existing estimates of production and consumption showed a margin for the world's supply of production over consumption of only 226,000 tons,—less than the world's consumption needs for four days—a margin which might be readily wiped out by weather conditions, and so slight as to justify grave apprehension of the sufficiency of the world's available supply for the world's needs (R., p. 57, fol. 73).

We know of no more satisfactory reasons for advancing prices.

The Government in its brief (p. 85) refers to "the leap of \$1.00 per hundred pounds in the

price of all futures, and of 99¢ per hundred on spot sugar" occasioned by the advance publication on February 10th of the Government's sugar crop estimate made by the Department of Commerce. The Government's brief shows, by quotations from testimony taken before the Massachusetts Commission, exactly how such sudden advance came about (Appellant's Brief, pp. 107, 109, 110):

"On February 9th the Department of Commerce released for use not earlier than February 12th, a summary of an article on Sugar Production and Consumption, to be published in the Commerce Reports issued February 12th, 1923. * * * This story was featured in the press in sensational headlines as early as the morning of February 10th. * * * The public had the opportunity over the week end of February 10th and the holiday of February 12th, to digest both of these alarming reports (p. 109). * * * The advance is directly attributable to the misleading statement issued by the United States Department of Commerce indicating a decided scarcity of sugar throughout the world and which was followed this morning by a reduction of the Cuban crop estimates by Messrs. Guma-Mejer of Havana * * * (p. 110).

The Government, in effect conceding that the immediate cause of the sudden rise in prices was this misleading report of the Department of Commerce, says (p. 112):

"There would have been no agitation if there had been no Exchange, or if it had been properly and legally organized; and no abnormal rise in prices would have resulted."

The Government might have said more accurately that there would have been no agitation *if there had been no sugar, or if there had been no Department of Commerce, or if it had been properly conducted.* Obviously, the "spot" market would have been agitated by what happened, even if there had been no Exchange. The Government's announcement, at a time when refiners and distributors had low stocks on hand, led to a scramble to accumulate supplies, and caused a near panic.

The Bill (R., p. 17), alleges:

"The United States Department of Commerce estimates the 1922-23 world production of sugar at 19,511,000 tons, an increase of 1,800,000 tons over 1921-22."

This statement is only 1,203,000 tons out of the way. The United States Department of Commerce, in its publication of February 12, 1923, as shown by the copy annexed to the affidavit of Mr. Diercks (R., p. 80), estimated the world's production of sugar for 1922-23 at 18,308,000, and not 19,511,000. The Bill's conclusions are, we believe, as inaccurate as its statement of facts.

The Bill itself shows that the margin of safety of available supplies over the world's demand is relatively small on the basis of an estimated Cuban crop of 4,000,000 tons. Two of the four leading statisticians have reduced this estimate by over one-quarter of a million tons, so that on their figures the true statistical estimated surplus is less than four days' world supply (Answer, R., page 57).

The economic reasons for advancing prices are, we submit, conclusively established.

POINT IV.

Grave results would follow a forced closing of the Exchange and the Government's purpose would undoubtedly be defeated thereby.

The Bill charges and the answer admits that the Exchange "is the largest commercial center for transactions relating to sugar in the world," and that its quotations "are taken by those who own and sell sugar and those who purchase sugar as the basis for prices in actual transactions."

In other words, all the transactions in sugar in the United States are alleged to be based on the Exchange's quoted prices for futures. The Court below was asked by one fell stroke to wipe out this universal basis of trading and substitute nothing for it—except ignorance of market trends, speculation, guesses and immediate local conditions. Instead of lower prices, the probability is that any such drastic act would tend to raise prices, and, by removing the barometer which tells the trade at large of the conditions in the trade and the trend of future prices, lead to violent and disastrous fluctuations of price with all the evil effects attendant thereon.

In this Court, the Government asks, as an alternative, that, by decree, this Court shall impose on the Sugar Exchange regulations similar to those imposed by Congress on the Chicago Board of Trade. It is enough to say in answer that that is a legislative and not a judicial function.

At page 121 of its Brief, the Government ingenuously says:

"Apparently it is a simple problem for

raw sugar, which is manufactured in different places during certain periods of the year, to find a purchaser among the sixteen refineries, and a simple problem for these refineries to pass the refined sugar on to the wholesaler * * *. There was no Sugar Exchange in existence in this country prior to December, 1914, and its activities were suspended from August, 1917, to February, 1920, and consequently its operation has extended over a period of only five or six years. Therefore, it certainly cannot be insisted with reason that its existence is essential to the distribution of sugar in the United States."

The Government is right in thinking that it is "a simple problem" for raw sugar growers to sell to only sixteen refineries owned by ten (10) companies (Appellant's Brief, p. 20). It is a still "simpler problem" for them to sell to only a single purchaser; but it is fairly obvious that with only a single purchaser, or only ten purchasers, the market for raw sugar would not be established by the free competition which the Sherman Act was intended to promote. The fewer the transactions in sugar, the greater certainty that the price will be controlled. Similarly, it is a simple matter for the relatively few Cuban growers of sugar to enhance the price of sugar, if there is not a free market and if transactions are so few that they can be controlled. Part of the usefulness of the Exchange is in preventing invisible combinations between a few refiners, on the one hand, or between a relatively small number of growers of raw sugar, on the other.

It is true that the United States existed without an Exchange for a great many years. It is equally true that it existed without railroads for many years; without telephones or telegrams for

many years; without gas or electricity or even friction matches for many years; but there is no reason for abolishing these convenient modern inventions. There was, if we mistake not, even a time when the United States was without a Sherman Act, or advance crop reports from a Department of Commerce.

POINT V.

The recent decision of the Supreme Court in the Grain Futures Act case is no precedent for the present suit.

In the recent case of the Board of Trade of the City of Chicago against Olsen, and others, argued at the last October term and decided on April 16, 1923, this Court upheld the validity of the Grain Futures Act (against an attack that it was invalid for the reason that interstate commerce was not affected), on the ground that the act evidenced a conclusion of Congress that manipulation or speculation on the grain future market might interfere with interstate commerce and that the grain future market, being a public utility, was therefore a legitimate object of regulation by Congress.

In other words, Congress by passing, and this Court by sustaining the Act, recognized that the opportunities afforded by the Board of Trade for future trading in wheat, and the effect thereof on the trade, made the Board of Trade a public utility and a fit object of regulation like any other public utility affecting interstate commerce. Neither Congress nor this Court under-

took to destroy the Board of Trade. But in this case the Government has sought by Court action to destroy the Sugar Exchange—apparently on the curious theory that, since Congress has the right to regulate the Exchange to prevent manipulation, the Courts without any evidence of manipulation should destroy it. It is as sensible to say that because railroad managements of the country have at times been guilty of abuses all railroads should be destroyed.

POINT VI.

No facts showing concerted action or collusion on the part of the defendants to enhance prices or curtail production or restrain trade are shown.

The learned Assistant Attorney General conceded on the argument below that there was no corner, but asserted that the Exchange had been used "by a small group of men" to enhance prices; but no facts were pleaded to connect the small group of men referred to with the defendants in this action. If, as the learned Assistant Attorney General stated below in his oral argument, the evil that he complained of had been brought about by a small group of men improperly using the Exchange, the Bill should have been directed against such small group of men and not against the actual defendants.

If the bill had been directed against a small group of men who had agreed to bid higher and higher prices for sugar, in the hope of raising the price level and then "unloading" at a profit,

a fairly simple situation would be presented for discussion and adjudication. But the Bill makes no such allegation. It does not attempt to point out which, if any, members of the Exchange are parties to any such agreement. It is not shown that the entire membership of the Exchange is engaged in any such conspiracy. On the contrary, the situation developed by the record clearly negatives any such general conspiracy. The members of the Exchange are for the most part brokers who execute orders for other persons and the Exchange furnishes facilities for the whole world, not only to buy but also to sell. It is not claimed that any of the transactions on the Exchange are "wash" sales. The individual defendants expressly deny making "wash" sales (R., pp. 82, 83). Therefore, every *purchase* made on the Exchange involved a *sale* as well. For every individual who bought at a high price, hoping that prices would go higher and (if he was a speculator, as charged) intending to force prices higher, there was a seller, who was either indifferent to the subsequent course of prices, if he was not a speculator, or who hoped or intended that prices would go lower, if he was a speculator who intended to buy back his contract at a profit at some later date.

The Government makes no attempt to point out which defendants, if any, were trying to raise prices. The facts contained in the Government's case are equally consistent with the hypothesis that the Exchange, by furnishing a free market for sellers, furnished a very real protection to the public against the alleged conspiracy of those few unnamed wicked men to effect an exorbitant increase in sugar prices.

That indeed is the very purpose and function of an exchange. It arrays the entire force of the

general public's wealth and economic foresight against artificial manipulation. If it furnishes an arena for the activities of speculators, it equally directs against them those means of public defense which are most effective because most consonant with economic law.

For this reason, moreover, a Bill under the Sherman Act, when directed against an exchange needs to be more specific in its charges of "concert" than if it were directed against an association of manufacturers or of dealers, where every member's interest or hope of profit coincides with every other members;—where they are all on the same side of the market instead of trading against one another.

The Government largely relies on *American Column Co. vs. United States*, 257 U. S., 377, the so-called *Hardwood Trust* case. The majority opinion in that case concluded as follows (italics ours):

"Convinced, as we are, that the purpose and effect of the activities of the 'Open Competition Plan', here under discussion, were to *restrict competition* and thereby restrain interstate commerce in the manufacture and sale of hardwood lumber by concerted action in *curtailing production and in increasing prices*, we agree with the District Court that it constituted a combination and conspiracy in restraint of interstate commerce within the meaning of the Anti-Trust Act of 1890."

It will be noted that in that case this Court held that the action complained of *curtailed production and restricted competition* as well as increased prices. It is not alleged that the Exchange or the Clearing Association or their officers or directors curtailed production or restricted com-

petition, and it is a mere conclusion of the pleader that anything that they did increased prices.

The members of the Exchange are for the most part brokers who execute orders sent them by their principals from over twenty different countries of the world (Diercks' affidavit, R., p. 68). *The prices for futures on the Exchange have not advanced more rapidly than the prices for spot deliveries and the prices made by refiners for refined sugar. Indeed, the advances in futures have been less than, or intermediate between, the other two, showing the stabilizing effect of the future trading.* (Diercks' affidavit, R., p. 77).

In this connection it is interesting to note that the Tariff Commission, asked by the President of the United States on March 27th of this year, to investigate and report on the relation of the sugar tariff to the high prices for sugar, did not ascribe such high prices to the defendants in this case. In substance, the Commission reported (Diercks' affidavit, R., page 78),

"that the tariff on sugar was not the cause of the advance but was only one factor in an equation with numerous variables, and that even in normal times numerous factors tend to affect prices of sugar in the United States, to wit (a) the present and anticipated demand of all the countries of the world; (b) the present stocks and anticipated production of all producing countries; (c) the general credit situation; (d) the present and anticipated prices of substitute or derivative products; (e) the fluctuations in foreign exchanges; (f) the changes in tariff rates here and abroad, and other factors."

Had the Tariff Commission agreed with the

Department of Justice that the high prices were due, even in part, to these defendants, it would certainly have expressly said so.

POINT VII.

The decree below should be affirmed.

Respectfully submitted,

VAN VORST, MARSHALL & SMITH,
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25 Broad Street,
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JOHN W. DAVIS,
WM. MASON SMITH,
Of Counsel.

Nov. 3rd, 1923.

In the Supreme Court of the United States.

OCTOBER TERM, 1923.

UNITED STATES OF AMERICA, APPELLANT, v. NEW YORK COFFEE & SUGAR EXCHANGE (Inc.), New York Coffee & Sugar Clear- ing Association (Inc.), et al.	}	No. 331.
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*APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF NEW YORK.*

REPLY BRIEF FOR THE UNITED STATES.

The United States desires to reply very briefly to certain of the more relevant contentions of the appellees.

I.

The contention that there is neither allegation nor proof of a combination or conspiracy among the defendants.

(1) Appellees find it convenient to interpret the case as charging merely a combination or conspiracy to enhance the price of sugar by "rigging" the market in February, 1923, and then complain that the case is not solely directed at those responsible for the "rigging" operations.

This attempted substitution of an incident for the case is neither warranted by the bill, the position of

the Government in the District Court, the assignments of error, nor the contentions of the Government in this Court.

We are not alleging a conspiracy to increase or reduce prices or a conspiracy to control the production or price of sugar. The Exchange itself is the tool of the conspirators; its maintenance and operation to fix the price of sugar is the conspiracy.

Neither are we concerned with the fact that natural causes do affect the price of sugar and do affect the price registered for sugar on this Exchange. But natural causes are not the only causes which affect and contribute to the fixing of these prices. The Exchange is the artificial means by which the price of sugar is fixed and commerce therein is restrained.

The plain allegations of the bill are that the defendants have created and are maintaining an instrumentality for the artificial control of prices in a commodity which is normally a subject of both interstate and foreign commerce; that such instrumentality plays no necessary or useful part in the *actual* marketing of sugar from the producers to the refiners and from the refiners to the consumers; that the operations of the defendants by and through said instrumentality do, however, affect directly the prices to be observed in the actual marketing of sugar; that for a period of more than two months prior to the filing of the bill said control was exercised to increase prices to a level not warranted by the laws of supply and demand; that the individual

defendants, through the instrumentality of the corporation defendants, had brought about the result of a course of conduct which had nothing to do with the orderly marketing of sugar; and that operation of the defendants giving rise to such artificially inflated prices were not only unlawful and reprehensible *per se*, but were abnormal and unprecedented in the history of defendants' peculiar activities.

The case is directed at the creation, maintenance, and operation of the Exchange and Clearing Association. The theory of the case is that operations on the Exchange are subject to "constantly recurring abuses" which are a "burden and obstruction," and, consequently, a "restraint" upon interstate and foreign commerce. The case is aimed at the whole business of the Exchange; although the Government would except from the decree the relatively small proportion of that business consisting of bona fide sales of sugar and legitimate hedging contracts. The defendants are the Exchange and Clearing Association and all the officers and members thereof. These defendants, acting in concert, are solely responsible for the condition of which the Government complains. It must be, therefore, that they are engaged in a combination or conspiracy within the meaning of the Sherman Law.

(2) While appellees admit that the words "combination" and "conspiracy" are liberally sprinkled through the bill, it is said that these are mere conclusions and not allegations of fact. It is to be

regretted that appellees have not enlarged upon this theme. Presumably it is their contention that the allegations that defendants "have been and are engaged in a combination and conspiracy" and that the acts complained of "constitute and are a combination and conspiracy" are not the equivalents of a charge that "the defendants have combined and conspired." Such a contention ignores the wording of the statute and overlooks the answer of this Court to a similar contention made in the *Swift case*, 196 U. S. 375, in which it was said:

Whatever may be thought concerning the proper construction of the statute, a bill in equity is not to be read and construed as an indictment would have been read and construed a hundred years ago, but it is to be taken to mean what it fairly conveys to a dispassionate reader by a fairly exact use of English speech.

(3) No motion to dismiss was interposed, but an answer was filed admitting in substance the important allegations of the bill, the principal traverse being as to the economic justification for the sudden increase in prices in February. In addition, the charters, by-laws, and trading rules of the Exchange and Clearing Association are all in evidence. The adoption and observance of these imply and require the concurrence, i. e., concert of action, of all the defendants. These, it is submitted, constitute abundant evidence of the combination and conspiracy complained of in the bill.

It is, of course, perfectly well settled that in order to establish a combination or conspiracy it is not necessary to allege or prove an express agreement. If the effect of what the defendants have done is to restrain trade, the conspiracy will be inferred. In *Eastern States Retail Lumber Dealers' Association v. United States*, 234 U. S. 600, 612, it was said:

But it is said that in order to show a combination or conspiracy within the Sherman Act some agreement must be shown under which the concerted action is taken. It is elementary, however, that conspiracies are seldom capable of proof by direct testimony and may be inferred from the things actually done, and when, in this case, by concerted action the names of wholesalers who were reported as having made sales to consumers were periodically reported to the other members of the associations, the conspiracy to accomplish that which was the natural consequence of such action may be readily inferred.

Another way of stating the proposition is in the language of this Court in *United States v. Patten*, 226 U. S. 525, 543:

And that there is no allegation of a specific intent to restrain such trade or commerce does not make against this conclusion, for, as is shown by prior decisions of this court, the conspirators must be held to have intended the necessary and direct consequences of their acts and can not be heard to say the contrary. In other words, by purposely engag-

ing in a conspiracy which necessarily and directly produces the result which the statute is designed to prevent they are, in legal contemplation, chargeable with intending that result.

Also see:

Regina v. Murphy, 8 C. & P. 297, 404.

Com. v. McLean, 2 Pars. (Pa.) 367, 388.

Patnode v. Westenhaver, 114 Wis. 460.

United States v. Sacia, 2 Fed. 754.

Reilly v. United States, 106 Fed. 896.

II.

The contention that there is neither allegation nor proof of restraint of trade.

(1) Let us repeat that the *gravamen* of the bill is artificial control of prices. The Government accepts and bottoms its case upon the finding of this Court in *Board of Trade v. Olson*, No. 701, Oct. Term, 1922, that "the question of price dominates trade between the States" and that "manipulations of * * * futures for speculative profit, though not carried to the extent of a corner or complete monopoly, exert a vicious influence and produce abnormal and disturbing temporary fluctuations of prices that are not responsive to actual supply and demand and * * * disturb the normal flow of actual consignments." We say, with this Court, that "sales of an article which affect the country-wide price of the article directly affect the country-wide commerce in it."

Appellees, in deference to the findings upon which the Grain Futures Act was sustained, apparently

concede that operations on the Exchange "are an obstruction to and a burden upon interstate commerce." (Br. p. 10.) Any attempted distinction between the terms "obstruction" and "burden" on the one hand and "restraint" upon the other must collide with the decision of this Court in the *Standard Oil Case*, 221 U. S. 1, 54, in which the origin of the latter is traced and its meaning expounded:

And by operation of the mental process which led to considering as a monopoly acts which although they did not constitute a monopoly were thought to produce some of its baneful effects, so also because of the *impediment* or *burden* to the due course of trade which they produced such acts came to be referred to as in restraint of trade.

And in the *United States v. Patten*, 226 U. S. 525, 543, it is said:

Bearing in mind that such was the nature, object, and scope of the conspiracy, we regard it as altogether plain that by its necessary operation it would directly and materially *impede* and *burden* the due course of trade and commerce among the States and therefore inflict upon the public the injuries which the Anti-Trust Act is designed to prevent.

It has often been held that a physical obstruction to the movement of interstate commerce constitutes a restraint thereof within the meaning of the Sherman Law. *In re Debs*, 158 U. S. 564, affirming 64 Fed. 724; *Steers v. United States*, 192 Fed. 1; *United States v. Railway Employees Dept.*, 283 Fed. 479.

The terms are synonymous and are used interchangeably. Thus in *Eastern States Retail Lumber Dealers' Association v. United States*, 234 U. S. 600, 613, this Court, in disposing of a contention similar to one made in this case, said:

The argument that the course pursued is necessary to the protection of the retail trade and promotive of the public welfare in providing retail facilities is answered by the fact that Congress, with the right to control the field of interstate commerce, has so legislated as to prevent resort to practices which unduly *restrain* competition or unduly *obstruct* the free flow of such commerce, and private choice of means must yield to the national authority thus exerted.

(2) In *American Column & Lumber Co. v. United States*, 267 U. S. 377, the injunction against the American Hardwood Manufacturers' Association was sustained on the ground that that organization constituted a combination to restrain trade by unduly enhancing prices. As pointed out in the dissenting opinion "there was at no time uniformity in prices" (p. 417). The maintenance of abnormally high price levels was the gist of the offending against the Sherman Law. The Court said (p. 409):

These quotations (from the correspondence of the members) are sufficient to show beyond discussion that the purpose of the organization and especially of the frequent meetings was to bring about a *concerted effort to raise prices regardless of cost or merit, and so was*

*unlawful. * * ** Without going into detail the record shows that the prices of the grades of hardwood in most general use were increased to an unprecedented extent during the year. * * * We can not but agree with the members of the "Plan" themselves and with the District Court in the conclusion that the united action of this large and influential membership of dealers contribute greatly to this extraordinary price increase.

Commenting on the action of the defendants in compiling reports of their business operations for circulation among their competitors, the Court said (p. 410):

This is not the conduct of competitors but is so clearly that of men united in an agreement, express or implied, to act together and pursue a common purpose under a common guide that, if it did not stand confessed a combination to restrict production and increase prices in interstate commerce and as, therefore, a direct restraint upon that commerce, as we have seen that it is, that conclusion must inevitably have been inferred from the facts which were proved.

To the same effect is the recent decision in the *Linseed Oil Case*.

(3) Although in view of the foregoing it would seem to be sheer supererogation, it is nevertheless worthy of note that the bill twice alleges that the effect of the artificial price manipulation by and through the instrumentality is directly to affect interstate trade and commerce by decreasing the

volume of sugar moving therein (R. 24, 25); and that there is an abundance of affirmative proof that said operations actually have had that effect (R. 123, 127, 129, 130, 313).

III.

The contention that the practices complained of can not be reached under the Sherman Law and that additional findings and legislation are necessary.

It is true that this precise question has not heretofore been raised under the Sherman Law. But in *United States v. American Tobacco Co.*, 221 U. S. 106, 175, 181, there was no hesitancy in giving to that statute "a more comprehensive application than has been affixed to it in any previous decision" where facts involved "questions as to the operation of the Anti-Trust Act not hitherto presented in any case"; and this for the reason that the statute "embraced every conceivable act which could possibly come within the spirit or purpose of the prohibitions of the law, without regard to the garb in which such acts were clothed," and "in view of the general language of the statute and the public policy which it manifested there was no possibility of frustrating that policy by resorting to any disguise or subterfuge of form, since resort to reason rendered it impossible to escape by indirection the prohibitions of the statute."

The Sherman Law is all-embracing in its terms and adequate to any situation which involves a direct or substantial restraint upon the commerce of the United States. And in giving effect to the policy

which the law establishes, the courts are invested with full power to remove the prohibited restraint, whatever the means by which it is accomplished. As said in *Gompers v. Bucks Stove & Range Co.*, 221 U. S. 418, 438-439:

The court's protective and restraining powers extend to every device whereby property is irreparably damaged or commerce is illegally restrained. To hold that the restraint of trade under the Sherman antitrust act, or on general principles of law, could be enjoined, but that the means through which the restraint was accomplished could not be enjoined, would be to render the law impotent.

In the *Olsen Case* this Court sustained the Grain Futures Act upon the very ground that the operations of the Board of Trade resulted in obstructions to and restraints upon interstate commerce which are contrary to and violative of the Sherman Law. Evidence of such direct connection with and effect upon interstate commerce was deemed essential to the validity of the Act. The mere fact that Congress has seen fit to impose particular regulations governing transactions in grain futures can not mean that like transactions in sugar futures, which directly obstruct and restrain interstate commerce in sugar, are not within the scope of the Sherman Law. If that were true, we would be confronted with the following absurdity: (a) That in order to sustain a particular regulation of a given business it must be shown that the evils to be remedied are the same as those at which the Sherman Law is aimed; (b) and

that such regulation having been imposed, the Sherman Law can never be invoked to correct like evils in a somewhat similar business, but resort must be had to Congress and legislation enacted upon the same premise, namely, that the situation to be remedied is contrary to a law already on the statute books.

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Special Assistants to the Attorney General.



Decree affirmed.

UNITED STATES *v.* NEW YORK COFFEE AND
SUGAR EXCHANGE, INC., ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES
FOR THE SOUTHEEN DISTRICT OF NEW YORK.

No. 331. Argued November 16, 1923.—Decided January 28, 1924.

1. Sales of a commodity, upon an exchange, under contracts calling for actual delivery in the future but which in practice are cleared by the processes called "matching" and "ringing," serve useful

and legitimate purposes, and are legal when not abused for illegal ends. P. 619.

2. The fact that the facilities of such an exchange, and the influence of the prices there prevailing upon sales elsewhere, may have been used by persons, not identified, in a criminal conspiracy to cause a rise of market prices, is no basis for a suit under the Anti-Trust Law to enjoin the further operation of the exchange itself and its attendant clearing house, or for a mandatory injunction to reframe their rules. P. 620.
3. Provision of rules and regulations for the conduct of such exchanges to prevent future abuse, by others, of their lawful functions, is a legislative, and not a judicial, office. P. 621.

Affirmed.

APPEAL from a decree of the District Court dismissing a suit for an injunction, under the Anti-Trust Law.

Mr. James A. Fowler, Special Assistant to the Attorney General, and *Mr. Assistant to the Attorney General Seymour*, with whom *Mr. Attorney General Daugherty*, *Mr. Solicitor General Beck*, *Mr. Roger Shale*, *Mr. A. F. Myers* and *Mr. David A. L'Esperance*, Special Assistants to the Attorney General, were on the briefs, for the United States.

Nothing but futures are bought and sold on the Exchange, and there are practically no deliveries made pursuant to such transactions.

The by-laws and rules controlling the Exchange and Clearing Association are designed to promote speculative transactions and to prevent deliveries of sugar through the Exchange. And when contracts made upon the Exchange are read in the light of its by-laws and rules, it is apparent that an actual delivery is rarely, if ever, contemplated.

The evidence shows that the prices of sugar in the market, both for immediate and future delivery, are controlled entirely by the prices upon the Exchange, although there may be a slight difference between the "spot" price and the price of the nearest future.

Practically all of the contracts, if not every contract, on the Exchange, are unlawful and unenforceable under the rules laid down by this Court, and recognized by all courts as the law governing such transactions. *Irwin v. Williar*, 110 U. S. 499; *Clews v. Jamieson*, 182 U. S. 461; *Pearce v. Rice*, 142 U. S. 28.

In a case which involves a transaction, or even a series of transactions, between certain brokers on the Exchange, as were the facts in *Clews v. Jamieson*, *supra*, it may be difficult to prove that an actual delivery was not contemplated, and the presumption that a delivery was actually intended may not be overcome; but such presumption is absolutely destroyed when it is conceded that every contract during the day on the Exchange is of such character that no delivery could have been contemplated by either party in the making of any of them.

Now, if such be the law relating to contracts upon the Exchange when all of them are "hedging" transactions, *a fortiori* must the same rule apply when some of the contracts for the day are made by pure speculators, as described in the answer, and all the others are hedging contracts. The fact that an exceedingly small proportion, considerably less than 1 per cent., of the contracts are consummated by actual deliveries can not alter the situation.

The advances in prices of "spot" and raw sugar from February 1st to the date of the filing of the petition were very largely, if not entirely, the result of speculative operations on the Exchange; and were not justified, or caused, by the existing or prospective supply of, or demand for, sugar.

Counsel then discussed the functions of an exchange and its economic effect, and the views of economists; also legislation relating to exchanges.

Authorities relied upon by defendants—*Irwin v. Williar*, 110 U. S. 499; *Bibb v. Allen*, 149 U. S. 481; *Clews v. Jamieson*, 182 U. S. 461; *Bond v. Hume*, 243 U. S. 15;

Spring v. James, 137 App. Div. 110,—were distinguished upon the ground of the difference between an action between private individuals involving transactions on an exchange and an action by the Government, representing the public, attacking the general course of conduct of the exchange.

In *Board of Trade v. Christie Grain & Stock Co.*, 198 U. S. 236 (cf. *Board of Trade v. O'Dell Commission Co.*, 115 Fed. 574; *Board of Trade v. Donovan Commission Co.*, 121 Fed. 1012; *Board of Trade v. Kinsey Co.*, 130 Fed. 507,) the Court first draws a distinction between a contract to settle by paying differences at a specified time, and a contract where it is merely expected that it will be satisfied by a set-off, there being no definite understanding to that effect. But in the present case it is shown that all the contracts are made for the purpose of "hedging" or by speculators, and that all are intended to be settled by "rings" or "matching."

As supporting the Government's contentions, there were cited: *United States v. Standard Oil Co.*, 221 U. S. 1, 59-62; *American Column Co. v. United States*, 257 U. S. 377; *United States v. American Oil Co.*, 262 U. S. 371; *United States v. Patten*, 226 U. S. 525; *Chicago Board of Trade v. Olsen*, 262 U. S. 1; *Addyston Co. v. United States*, 175 U. S. 211, 241, 242.

Mr. William Mason Smith and Mr. John W. Davis for appellees.

The bill set out no case for relief under the statutes invoked.

The bill was properly dismissed as lacking in equity. No facts showing a conspiracy, combination or contract to restrain trade were alleged or proved. The allegations to that effect were mere conclusions.

The Government's charge that no economic cause existed for the advance in sugar prices was disproved.

Grave results would follow a forced closing of the Exchange, and the Government's purpose would undoubtedly be defeated thereby.

The decision of this Court in *Chicago Board of Trade v. Olsen*, 262 U. S. 1, is no precedent for the present suit.

No facts showing concerted action or collusion on the part of the defendants to enhance prices or curtail production or restrain trade are shown.

MR. CHIEF JUSTICE TAFT delivered the opinion of the Court.

This was a petition filed by the United States in the District Court for the Southern District of New York against the New York Coffee and Sugar Exchange, the New York Coffee and Sugar Clearing Association, corporations of the State of New York, and their officers and directors, for an injunction against the maintenance of an alleged conspiracy in violation of the Anti-Trust Act of July 2, 1890, c. 647, 26 Stat. 209, and of its supplementary Act of August 27, 1894, c. 349, 28 Stat. 570, as amended February 12, 1913, c. 40, 37 Stat. 667. The proceeding was brought under the expediting provisions of the Act of February 11, 1903, c. 544, 32 Stat. 823, as amended June 25, 1910, c. 428, 36 Stat. 854. The Attorney General having duly filed a certificate that the case was of general public importance, notice of a motion for an interlocutory injunction was given by the petitioner. The corporate defendants filed an answer which by stipulation was made the answer of the individual defendants. By further stipulation the cause was submitted to final hearing before three Circuit Judges upon petition and answer and the affidavits which had been presented by both sides on the motion for a preliminary injunction. The petition was dismissed, and this is an appeal under § 2, c. 544, of the Act of February 11, 1903, 32 Stat. 823.

The sugar market of the New York Coffee and Sugar Exchange was not organized until the great war in 1914, when foreign sugar exchanges ceased to function. It was intended to afford a world exchange for the purchase and sale of sugar. It continued as an exchange until this country engaged in the war, when it was closed by government direction. Upon the coming of peace, it opened again and has been in operation ever since. The dealings are chiefly in raw sugars. The contracts made are for future delivery. There are no "wash" sales, i. e., merely bets upon the market in which it is understood between the parties that neither is bound to deliver or accept delivery. But it is true that the sugar is not delivered except in a very small percentage of the contracts. The contracts are settled by offsetting purchases against sales, i. e., by "matching" as it is called, or by "ringing." This is the same general method of settlement as that which prevails in grain sales for future delivery on the Chicago Board of Trade, and is described by this Court in *Board of Trade v. Christie Grain & Stock Co.*, 198 U. S. 236, 247, *et seq.* The Sugar Clearing Association, codefendant herein with the Exchange, though a separate corporation, is under the same general management as the Exchange and its function is to provide a clearing house in which such ringing settlements are made. About seventy-five per cent. of the transactions are thus cleared. Nearly all the rest are "matched" and only a tenth to a quarter of one per cent. of the contracts are settled by actual delivery under the rules of the Exchange. The prices at which raw sugar is sold elsewhere for immediate delivery, i. e., of "spot" sales, vary very much as the prices for future delivery vary on the Exchange. It is clear that the prices for futures have a direct relation to, and effect upon, the prices in "spot" sales. The prices of raw sugar that prevail in the Exchange are used as a basis for the prices of sugar in the markets of the world.

Cuba is the largest single source of raw sugar for the United States and its crop equals or exceeds the supply from all other sources, domestic or foreign. The petition charges that the Exchange and the Clearing Association are machinery for the promotion of gambling, that though its contracts for futures on their face are for actual delivery, they really are not intended or expected by either party to result in delivery, that the Exchange rules discourage delivery, that when in fact actual delivery is sought, purchases are not made on the Exchange but elsewhere, that the Exchange thus puts in the hands of gamblers the means of influencing directly the prices of sugar to be delivered and thereby of obstructing and restraining its free flow in trade between Cuba and the United States and between the States.

The occasion for the suit was a violent fluctuation in the price of sugar futures and as a consequence in the price of spot sugars, during February, March and April of 1923. The petition alleges that during this period there was no economic justification for such a sudden and excessive increase, but that, notwithstanding, raw sugar at New York, May delivery, increased \$3.65 to \$4.07 per cwt. between February 1st and February 8th, and thereafter gradually increased from day to day until April 16th, when the peak of \$5.97 per cwt. was reached. The effect upon refined sugar used by the consuming public was to increase its price for immediate delivery in New York from \$6.70 per cwt. in February to \$9.30 per cwt. in March and April.

The petition charges that all this was "the direct result of a combination and conspiracy between the New York Coffee and Sugar Exchange (Inc.), the New York Coffee and Sugar Clearing Association (Inc.), and the officers and members of those corporations and their clients or principals, who, by means of purported purchases and

sales of sugar, have sought to establish and have established artificial and unwarranted prices, not governed by the law of supply and demand, but based wholly on speculative dealings not involving the delivery of the quantities of sugar represented thereby, but altogether carried on for the purpose and with the effect of unduly enhancing the price of sugar to the enrichment of said defendants and their principals and to the detriment of the public."

The prayer is that the court adjudge that the by-laws, rules and regulations of the defendant corporations, in so far as they relate to sugar, and the concerted action of the individual defendants in carrying them out, show a combination and conspiracy in violation of federal anti-trust laws, and that the defendants and each of them be enjoined from maintaining and operating the Sugar Exchange and Clearing House, from publishing the prices of raw or refined sugar in Exchange transactions as purporting to be its market price, from attempting to establish it as such in *bona fide* dealing in actual sugar, and "from entering into or permitting to be entered into any transactions on said Exchange or elsewhere involving or purporting to involve the purchase, sale, and delivery of sugar, unless the person purporting to make such sale has in his possession or under his control a supply of sugar adequate to meet the requirements of such transaction, and the person purchasing or purporting to purchase shall in good faith intend to buy and pay for such sugar and accept delivery as soon as same can be made."

The answer of the corporate defendants denied all charges of combination and conspiracy to increase prices or to obstruct or restrain the free flow of commerce in sugar, gave the history of the organization of the two corporations, and alleged that they served a very useful purpose in stabilizing the price of sugar by furnishing a free market for this country and the world.

The evidence shows that the rules and organization of the Exchange and Clearing Association are very like those of the Chicago Board of Trade and similar Exchanges for the sales of commodities for future delivery. It is true that spot sales are not encouraged and that less actual deliveries take place in this Exchange than in some of the Exchanges for sales of other commodities, but actual deliveries are provided for in every contract and may be lawfully enforced by either party.

The usefulness and legality of sales for future delivery, and of furnishing an Exchange where under well-defined limitations and rules the business can be carried on, have been fully recognized by this Court in *Board of Trade v. Christie Grain & Stock Co.*, 198 U. S. 236, 246. Those who have studied the economic effect of such Exchanges for contracts for future deliveries generally agree that they stabilize prices in the long run instead of promoting their fluctuation. Those who deal in "futures" are divided into three classes: first, those who use them to hedge, i. e., to insure themselves against loss by unfavorable changes in price at the time of actual delivery of what they have to sell or buy in their business; second, legitimate capitalists who, exercising their judgment as to the conditions, purchase or sell for future delivery with a view to profit based on the law of supply and demand; and, third, gamblers or irresponsible speculators who buy or sell as upon the turn of a card. The machinery of such an Exchange has been at times made the means of promoting corners in the commodity dealt in by such manipulators and speculators, thereby restraining and obstructing foreign and interstate trade. In such instances, the manipulators subject themselves to prosecution and indictment under the Anti-Trust Act. *United States v. Patten*, 226 U. S. 525. But this is not to hold that such an Exchange with the facilities it affords for making contracts for future deliveries is itself a combina-

tion and conspiracy thus to restrain interstate and foreign trade.

There is not the slightest evidence adduced to show that the two corporate defendants or any of their officers or members entered into a combination or conspiracy to raise the price of sugar. The circumstances upon which the Government placed its case were a violent rise in the price of sugar without any economic justification or explanation, lasting two months or more and manifesting itself first in "futures" on the Exchange and afterwards in the price of refined sugar for immediate delivery. The defendants suggest that this was due to a popular misconception of the regular monthly report of the Department of Commerce as to a probable shortage in the supply of sugar during the year 1923, followed by a statement from a business house in Cuba, usually regarded as a reliable source of information, that the previous estimate of the amount of the next Cuban crop was too high by several hundred thousand tons. Whether these circumstances were sufficient to explain in full the violent rise in the price of sugar, we need not discuss. The Government case fails because there is no evidence to establish that the defendants produced or attempted to produce the disturbance of the market.

The mere fact that the defendants were operating the Sugar Exchange and Clearing Association, even if we concede that some persons, not identified, combining and conspiring with criminal intent, used the Exchange and Clearing Association to cause the rise in sugar prices,—concessions which there is no testimony to support,—furnishes no reason for enjoining defendants from continuing the Exchange or for a mandatory injunction to reframe the rules of the Exchange and the Clearing Association.

The Government contends that the prayer of the petition is justified by the decision of this Court in the case of *Chicago Board of Trade v. Olsen*, 262 U. S. 1. It has

no application. We held there that Congress, having found that the sales of grain for future delivery on the Board of Trade were susceptible to speculation, manipulation and control affecting interstate consignments of grain, in such a way as to cause a direct burden on, and interference with, interstate commerce therein, had power to place such markets under federal supervision to prevent such abuses. But nothing in the case sustains the view that those promoting and operating such an Exchange are themselves imposing a burden or restraint upon interstate commerce for which they may be indicted under the Anti-Trust Act, or from continuing which they may be enjoined. The Government in effect asks this Court to enforce rules and regulations for the conduct of the Sugar Exchange which shall prevent the future abuse of its lawful functions. This is legislative and beyond our power.

The decree of the District Court is affirmed.
